

EXHIBIT 1

REDACTED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

WAYMO LLC,

Plaintiff,

Case

vs.

No. 3:17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;

OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

_____/

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF JOHN WILLIAM GURLEY
THURSDAY, AUGUST 24, 2017

Reported by:

Anrae Wimberley

CSR No. 7778

Job No. 2687934

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UBER TECHNOLOGIES, INC.;

OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

_____/

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Transcript of video-recorded deposition of
JOHN WILLIAM GURLEY taken at Morrison & Foerster LLP,
425 Market Street, 33rd Floor, San Francisco,
California, beginning at 8:37 a.m. and ending at 1:09
p.m. on Thursday, August 24, 2017, before Anrae
Wimberley, Certified Shorthand Reporter No. 7778.

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I N D E X

EXAMINATION BY:	PAGE
MR. VERHOEVEN	10

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Exhibit 913	Minutes of Meeting, Board of Directors, 5/15/17; Bates Nos. UBER00101499 through 500	108

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	QUESTIONS	WITNESS	INSTRUCTED	NOT	TO	ANSWER :
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1 THURSDAY, AUGUST 24, 2017; SAN FRANCISCO, CALIFORNIA;

2 8:37 A.M.

3 - - -

4 THE VIDEOGRAPHER: We're on the record at 8:37 on 08:37:51
5 August 24th, 2017. 08:37:53

6 Please note that microphones are sensitive 08:37:56
7 and may pick up whispering, private conversation and 08:37:59
8 cellular interference. Please turn off all cell 08:38:03
9 phones or place them away from the microphones, as 08:38:06
10 they can interfere with the deposition audio. 08:38:10

11 Audio and video recording will be taking 08:38:12
12 place unless all parties agree to go off the record. 08:38:16

13 This is Media Unit 1 of the video-recorded 08:38:18
14 deposition of William Gurley, taken by the counsel of 08:38:22
15 the plaintiff in the matter Waymo LLC versus Uber 08:38:27
16 Technologies, Inc., et al., filed in the United States 08:38:30
17 District Court, Northern District of California, 08:38:33
18 San Francisco Division, Case No. 17-cv-00939. 08:38:41

19 My name is Warren Nguyen from the firm of 08:38:46
20 Veritext Legal Solutions, and I'm the videographer. 08:38:49

21 The court reporter is Anrae Wimberley with 08:38:52
22 Veritext Legal Solutions. 08:38:53

23 I'm not related to any party in this action, 08:38:57
24 nor am I financially interested in the outcome in any 08:39:00
25 way. 08:39:00

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1	If there are any objections to the	08:39:02
2	proceeding, please state them at the time of your	08:39:04
3	appearance, beginning with the noticing attorney.	08:39:07
4	Will counsel please state your appearances.	08:39:10
5	MR. VERHOEVEN: Charles Verhoeven, Quinn Emanuel,	
6	on behalf of Waymo.	08:39:13
7	MR. JUDAH: James Judah, Quinn Emanuel, on behalf	08:39:14
8	of Waymo.	08:39:17
9	MR. FLUMENBAUM: Martin Flumenbaum, Paul Weiss	08:39:17
10	Rifkind Wharton & Garrison, on behalf of Mr. Gurley.	08:39:22
11	MS. BUNTING: Kristina Bunting, Paul Weiss Rifkind	08:39:22
12	Wharton & Garrison, on behalf of Mr. Gurley.	08:39:28
13	MR. BRILLE: Mike Brille, Boies Schiller &	08:39:29
14	Flexner, on behalf of Uber.	08:39:31
15	MR. TAKASHIMA: Ed Taskahima, Boies Schiller &	08:39:31
16	Flexner, for Uber and Ottomotto.	08:39:34
17	MR. BERGSTROM: Aaron Bergstrom, in-house counsel	08:39:35
18	for Uber.	
19	MR. JACOBS: Michael Jacobs, Morrison & Foerster,	08:39:37
20	for Uber and Ottomotto.	08:39:39
21	MR. BOOCK: Todd Boock from Goodwin & Procter on	08:39:42
22	behalf of Otto Trucking LLC.	08:39:43
23	THE VIDEOGRAPHER: Will the court reporter please	08:39:47
24	swear in the witness.	08:39:48
25	//	08:39:48

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JOHN WILLIAM GURLEY,

sworn as a witness by the Certified
Shorthand Reporter, testified as follows:

EXAMINATION

BY MR. VERHOEVEN: 08:39:48

Q. Good morning, Mr. Gurley. 08:40:02
A. Good morning. 08:40:03
Q. Could you just state your full name for the 08:40:05
record. 08:40:06
A. John William Gurley. 08:40:08
Q. By whom are you currently employed? 08:40:11
A. Benchmark Capital. 08:40:12
Q. And what is your position? 08:40:13
A. I'm a general partner. 08:40:15
Q. Can you -- how long have you been a general 08:40:18
partner at Benchmark? 08:40:20
A. Since '99. 08:40:22
Q. Do you have any knowledge about the Benchmark 08:40:27
initial investment into Uber? 08:40:30
A. Yes. 08:40:30
Q. What was your relationship to that? 08:40:33
A. I was the lead partner on effecting the 08:40:36
investment in January of 2011. 08:40:40
Q. So just to clarify, the investment became 08:40:45
effective in January of 2011? 08:40:47

1	A. Yes.	08:40:47
2	Q. What was the nature of Uber's business at	08:40:54
3	that time?	08:40:54
4	A. To the best of my recollection, the company	08:41:01
5	was operating a service that allowed you to book a	08:41:06
6	black car. I think we're only operating in	08:41:09
7	San Francisco at the time.	08:41:10
8	Q. Did there come a time when you became aware	08:41:15
9	of the subject of AV technology?	08:41:20
10	MR. FLUMENBAUM: Just so the record is clear --	08:41:25
11	BY MR. VERHOEVEN:	08:41:25
12	Q. Automatic vehicle, autonomous vehicle?	08:41:28
13	MR. BRILLE: Objection; form.	08:41:32
14	MR. BOOCK: Same objection.	
15	BY MR. VERHOEVEN:	
16	Q. Did there come a time when you became aware	08:41:35
17	of autonomous vehicle technology?	08:41:37
18	MR. FLUMENBAUM: Can one objection as to form	08:41:39
19	stand for everybody? Is that the rule here?	08:41:42
20	MR. BRILLE: Yes, that would be okay with me.	08:41:45
21	MR. FLUMENBAUM: Is that okay?	08:41:46
22	MR. BOOCK: That's fine for us.	08:41:48
23	MR. VERHOEVEN: Yes.	08:41:49
24	MR. FLUMENBAUM: I don't want to have to chime in	08:41:50
25	after somebody else does it.	08:41:53

1	BY MR. VERHOEVEN:	08:41:53
2	Q. Do you have the question in mind?	08:41:56
3	MR. FLUMENBAUM: You can ask for it to be	08:41:58
4	repeated.	08:41:58
5	THE WITNESS: No. No. I'm fine.	08:42:01
6	Yes.	
7	BY MR. VERHOEVEN:	
8	Q. When was that?	08:42:02
9	A. I don't have a specific recollection of that	08:42:04
10	date in -- the window.	08:42:05
11	Q. Was it after you -- excuse me.	08:42:07
12	Was it after Benchmark had invested in Uber?	08:42:12
13	A. Yes.	08:42:12
14	Q. Given that you don't have a specific window,	08:42:16
15	can you ballpark it for me, what year it was?	08:42:26
16	MR. FLUMENBAUM: Objection as to form.	08:42:32
17	THE WITNESS: My best recollection would be that	08:42:35
18	it -- around the time that it became part of the	08:42:37
19	public lexicon, you know, or slightly before, but I	08:42:41
20	don't recall exactly when that was.	08:42:43
21	BY MR. VERHOEVEN:	08:42:43
22	Q. When did you first discuss this subject with	08:42:48
23	Mr. Kalanick?	08:42:51
24	MR. FLUMENBAUM: Objection as to form.	08:42:51
25	You may answer.	08:42:54

1 THE WITNESS: I don't have a specific recollection 08:42:55
2 of the first time. 08:42:57
3 BY MR. VERHOEVEN: 08:42:57
4 Q. Do you have a recollection of discussing this 08:43:00
5 technology with Mr. Kalanick? 08:43:03
6 A. I'm certain that it was discussed at some 08:43:05
7 point, yes. 08:43:06
8 Q. What's your best estimate of what that point 08:43:09
9 was? 08:43:09
10 A. My best guess would be probably 2015, 08:43:16
11 beginning of 2015, something like that. 08:43:18
12 Q. Okay. Could you tell me what Mr. Kalanick 08:43:23
13 said to you? 08:43:26
14 A. I don't have specific recollection of 08:43:28
15 specific language. 08:43:30
16 Q. Generally? 08:43:32
17 A. Mr. Kalanick had a -- has a strong belief, 08:43:50
18 that I think is mirrored in his comments in the public 08:43:53
19 record, that this was an important technology related 08:43:56
20 to Uber. 08:43:58
21 Q. Related to what? 08:44:07
22 MR. FLUMENBAUM: "Related to Uber." 08:44:09
23 THE WITNESS: Sorry. 08:44:10
24 BY MR. VERHOEVEN: 08:44:10
25 Q. Sorry. 08:44:10

1 A. That's okay. 08:44:11

2 Q. And why did he say it was related to Uber? 08:44:16

3 A. I think there's also a lot of public 08:44:23

4 discourse about this notion, but there's -- obviously, 08:44:29

5 because the service is reliant on vehicles, to the 08:44:32

6 extent the vehicles became automated, it had the 08:44:35

7 potential to impact the business and its relationship 08:44:39

8 with drivers and all those things. 08:44:42

9 Q. He told you it was really important to Uber's 08:44:45

10 business; right? 08:44:47

11 MR. BRILLE: Objection; form. 08:44:49

12 MR. FLUMENBAUM: You may answer. 08:44:50

13 THE WITNESS: I think it's a fair statement. 08:44:52

14 BY MR. VERHOEVEN: 08:44:52

15 Q. Okay. Did he tell you it was an existential 08:44:54

16 threat? 08:44:56

17 A. He was quoted publicly as saying that. I 08:44:59

18 don't recall him telling me specifically that. 08:45:01

19 Q. Did you agree with him? 08:45:03

20 A. I don't agree with that assertion. 08:45:05

21 Q. Okay. Do you think that autonomous vehicle 08:45:09

22 technology is important to Uber? 08:45:12

23 A. It could be important. 08:45:13

24 Q. When would it not be important? 08:45:16

25 A. Well, there's an argument that the technology 08:45:19

1 threatens the service provider. I don't think, from 08:45:23
2 my own point of view, that anything Boeing builds 08:45:28
3 threatens United or Delta's business, from my point of 08:45:31
4 view. I have a different point of view on that topic 08:45:37
5 than he does. 08:45:38

6 Q. Okay. In what instances would it be a 08:45:40
7 threat? 08:45:41

8 MR. FLUMENBAUM: Objection as to form. 08:45:45

9 Could you be a little more clear, given his 08:45:47
10 prior answer? 08:45:48

11 BY MR. VERHOEVEN: 08:45:48

12 Q. Okay. I asked you, quote, "Do you think that 08:46:10
13 autonomous vehicle" -- the whole question isn't in 08:46:17
14 there. 08:46:17

15 I asked you whether you thought autonomous 08:46:20
16 vehicle technology would be important to Uber, and you 08:46:23
17 said, "It could be important." 08:46:24

18 Do you remember that? 08:46:25

19 A. Yes. 08:46:25

20 Q. Okay. Why could it be important? 08:46:29

21 A. There are cars that underline the operations 08:46:34
22 of the service. There are drivers that are in those 08:46:37
23 cars. There's the relationships between the drivers 08:46:40
24 and the -- that are important to the company. And so 08:46:43
25 if this new technology came along that displaced 08:46:47

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1 implication? 08:47:57

2 BY MR. VERHOEVEN: 08:47:57

3 Q. Yes. 08:47:58

4 A. Sure. Yes. Theoretically. Actually, let me 08:48:02

5 step back. 08:48:03

6 That would be heavily dependent on the cost 08:48:05

7 of the vehicle. Because if the vehicle cost 5X more 08:48:09

8 than a traditional vehicle, it would more than offset 08:48:13

9 the cost of the driver, in which case I don't think it 08:48:16

10 would have an impact at all. 08:48:17

11 Q. What is the cost to Uber for the human driver 08:48:20

12 expressed as a percentage of dollar revenue, if you 08:48:28

13 know? 08:48:28

14 A. What percentage of the revenue goes to the 08:48:32

15 driver? 08:48:33

16 Q. Yes. 08:48:34

17 A. I don't know if that's privileged or not. I 08:48:37

18 just don't know. 08:48:39

19 MR. BRILLE: So we have a protective order in the 08:48:42

20 case. And it is definitely highly confidential. And 08:48:45

21 we will designate anything that is business 08:48:47

22 confidential -- 08:48:48

23 THE WITNESS: Okay.

24 MR. FLUMENBAUM: Is it -- do I have to invoke the 08:48:52

25 protective order for purposes of this deposition? 08:48:54

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1 MR. BRILLE: You do not. We have an agreement 08:48:56
2 with the other side that we designate transcripts 08:48:59
3 after they come out, and we will take care of 08:49:01
4 something like that. 08:49:02
5 MR. FLUMENBAUM: So as far as I'm concerned, this 08:49:04
6 is -- so any business confidential information -- 08:49:06
7 MR. BRILLE: Correct. 08:49:07
8 MR. FLUMENBAUM: -- he can testify to? 08:49:08
9 MR. BRILLE: Yes, that is correct. 08:49:09
10 MR. FLUMENBAUM: Okay. And I don't have to -- do 08:49:09
11 I get to review the transcript as well? 08:49:13
12 MR. BRILLE: Yes. Absolutely. 08:49:14
13 MR. FLUMENBAUM: Okay. So I just want to make 08:49:15
14 sure that I have that opportunity as well. 08:49:18
15 MR. BRILLE: Yeah. 08:49:19
16 MR. FLUMENBAUM: And in the meantime, who can 08:49:21
17 share this deposition? 08:49:23
18 MR. BRILLE: In -- 08:49:27
19 MR. FLUMENBAUM: Until we review this stuff? 08:49:29
20 MR. VERHOEVEN: Should we go off the record for 08:49:30
21 this.
22 MR. BRILLE: Let's go off the record, yes. 08:49:33
23 THE VIDEOGRAPHER: Off the record at 8:49 a.m. 08:49:36
24 (Discussion off the record.) 08:49:55
25 THE VIDEOGRAPHER: Back on the record at 8:49 a.m. 08:49:58

1 BY MR. VERHOEVEN: 08:49:58

2 Q. I think you're allowed to answer the 08:50:02

3 question. 08:50:02

4 A. I honestly don't have the documents right in 08:50:04

5 front of me, so -- 08:50:05

6 Q. Of course.

7 A. And I would also say different services have 08:50:08

8 different answers on this, so there's no specifics. 08:50:11

9 But somewhere between, you know, [REDACTED] 08:50:15

10 typically, of the revenue goes to the driver. 08:50:19

11 Q. And so if you didn't have to pay drivers and 08:50:23

12 you could use an autonomous vehicle for your service, 08:50:26

13 that would be a huge competitive advantage, assuming 08:50:29

14 others couldn't do that? 08:50:32

15 A. Depends on the depreciation cost of the car. 08:50:36

16 If the vehicle costs five times more than a standard 08:50:40

17 car, you have to eat that depreciation cost to deliver 08:50:40

18 that service.

19 Q. But if the vehicle is roughly similarly 08:50:43

20 priced as a regular car, there would be a huge 08:50:46

21 advantage for the first mover in that technology; 08:50:50

22 right? 08:50:50

23 MR. FLUMENBAUM: Objection as to form. 08:50:52

24 You're speculating. 08:50:54

25 MR. VERHOEVEN: Counsel, I don't know if you're 08:50:56

1 familiar with Judge Alsup's rules, but he does not 08:50:59
2 allow anything -- you're not allowed to say anything 08:51:03
3 more than "object to form." 08:51:04
4 MR. FLUMENBAUM: Okay. Objection as to form. 08:51:06
5 BY MR. VERHOEVEN: 08:51:06
6 Q. Do you have the question in mind? 08:51:08
7 A. No one has delivered a fully autonomous 08:51:10
8 vehicle that could operate in a massive service at 08:51:14
9 scale. So knowing -- presuming that you know the cost 08:51:17
10 of that would be speculative, from my point of view. 08:51:21
11 So, yes, if you could do it, then, yes, that would be 08:51:25
12 true. 08:51:25
13 Q. If you could -- if you were a first mover 08:51:27
14 with working, approved autonomous vehicles in your 08:51:33
15 business model, that entity would have a huge 08:51:37
16 advantage competitively? 08:51:39
17 MR. FLUMENBAUM: Objection; form. 08:51:40
18 THE WITNESS: If you could move millions of units 08:51:43
19 at scale at a price that's equivalent to a normal car, 08:51:47
20 which, I would argue, is very hard to prove someone 08:51:50
21 could do at this moment in time. But, yes. 08:51:53
22 BY MR. VERHOEVEN: 08:51:53
23 Q. Okay. And that's why Mr. Kalanick was really 08:51:57
24 interested in developing autonomous vehicle 08:51:59
25 technology; right? 08:52:01

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1 MR. FLUMENBAUM: Objection as to form. 08:52:06

2 THE WITNESS: I think that's fair. 08:52:08

3 BY MR. VERHOEVEN: 08:52:08

4 Q. Did you -- in this conversation we're talking 08:52:16

5 about with Mr. Kalanick, did you express to him your 08:52:22

6 view on whether Uber should move forward with this 08:52:27

7 technology? 08:52:29

8 MR. BRILLE: Objection; form. 08:52:33

9 THE WITNESS: Keep going? 08:52:34

10 BY MR. VERHOEVEN: 08:52:34

11 Q. Every time there's an objection to form, you 08:52:38

12 still have to answer. 08:52:39

13 MR. FLUMENBAUM: You have to answer. I'm not

14 going to tell you not to.

15 THE WITNESS: Okay, great.

16 [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

3 BY MR. VERHOEVEN: 08:53:22

4 Q. Mr. Kalanick wanted to be the first with a 08:53:25
5 vehicle that had this technology in the marketplace, 08:53:27
6 didn't he? 08:53:28

7 MR. FLUMENBAUM: Objection as to form. 08:53:31

8 THE WITNESS: I don't have specific recollection 08:53:32
9 that he said, I definitely want to be first in this 08:53:36
10 technology. But that's different from whether or not 08:53:41
11 he did want to be first. I just don't have a specific 08:53:43
12 recollection. 08:53:44

13 BY MR. VERHOEVEN: 08:53:44

14 Q. So he never told you that he wanted to be the 08:53:47
15 first mover with this technology? 08:53:50

16 A. I don't have a recollection of that specific 08:53:52
17 statement. 08:53:53

18 Q. He never told you that it would be a huge 08:53:55
19 advantage if you were the first company out there in 08:53:59
20 the market with this technology? 08:54:02

21 A. I don't recall that specific statement, but I 08:54:04
22 also recall conversations where -- [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 08:54:38

7 Q. Okay. Did there come a time when Uber 08:54:46

8 started investing its money into this technology, this 08:54:52

9 autonomous vehicle technology? 08:54:54

10 A. Yes. 08:54:54

11 Q. When was that? 08:54:55

12 A. My first recollection of a substantial effort 08:54:59

13 related to the Carnegie Mellon transaction. 08:55:05

14 Q. And what do you mean when you say "the 08:55:07

15 Carnegie Mellon transaction"? 08:55:08

16 A. Once again, I think this is public record, so 08:55:14

17 you could find it with a Google search, but there was 08:55:17

18 a large transaction that involved some of the 08:55:20

19 employees of Carnegie Mellon coming on board -- or 08:55:24

20 some of the people associated with Carnegie Mellon 08:55:26

21 coming on board. And we set up a research 08:55:30

22 headquarters for autonomous in Pittsburgh. 08:55:33

23 Q. So was that a transaction with the group that 08:55:37

24 came over? You said there was a large transaction. 08:55:44

25 MR. BRILLE: Objection; form. 08:55:45

1 THE WITNESS: I don't understand the question. 08:55:48

2 BY MR. VERHOEVEN: 08:55:48

3 Q. Well, you said there's a large transaction in 08:55:50

4 which a number of Carnegie Mellon folks came over. 08:55:54

5 A. Correct. 08:55:54

6 Q. And you set up a lab, or whatever you want to 08:55:58

7 call it, in Pittsburgh; right? 08:55:59

8 A. Right. 08:55:59

9 Q. And so my question was, when you say "a large 08:56:03

10 transaction," are you referring to like a single 08:56:05

11 transaction where the whole group came over -- 08:56:08

12 A. I don't remember exactly if there were 08:56:10

13 multiple pieces in that. I'm just referring to it as 08:56:13

14 a single event. 08:56:15

15 Q. Did the board review and approve that? 08:56:18

16 A. I believe so. 08:56:19

17 Q. Okay. And what did Mr. -- who presented 08:56:26

18 the -- who recommended it to the board? 08:56:29

19 A. I don't have specific recollection of like 08:56:36

20 who presented it, but I -- my best guess would be that 08:56:42

21 it was Mr. Kalanick. 08:56:43

22 Q. But you don't remember what he said in 08:56:45

23 connection with that? 08:56:47

24 A. I don't, not at this moment in time. 08:56:50

25 Q. Do you remember any discussions by the board 08:56:59

1 about the importance of this technology, autonomous 08:57:05
2 vehicle technology? 08:57:07

3 MR. FLUMENBAUM: At around the time of the 08:57:08
4 Carnegie Mellon issue? 08:57:10

5 MR. VERHOEVEN: I asked my question; you can't 08:57:12
6 edit it. 08:57:15

7 BY MR. VERHOEVEN: 08:57:15

8 Q. Go ahead.

9 MR. BRILLE: But he can ask for clarification. 08:57:17

10 MR. VERHOEVEN: There's no -- you can object to 08:57:19
11 form or you can object on privilege grounds, nothing 08:57:22
12 else. 08:57:23

13 MR. FLUMENBAUM: Objection as to form. 08:57:27

14 BY MR. VERHOEVEN: 08:57:27

15 Q. Okay. Do you recall any discussions at the 08:57:29
16 board level about the importance of this technology? 08:57:33

17 A. Only -- yes, but only in a general sense. I 08:57:36
18 don't recall any specific one-on-one conversation. 08:57:41

19 Q. So when you say "in a general sense," you 08:57:44
20 mean in the sense of a presentation being made to the 08:57:47
21 group? 08:57:48

22 A. No, I just mean in the sense that it was 08:57:54
23 discussed more than once that autonomous technology 08:58:02
24 was important to ridesharing and that we needed to 08:58:07
25 have an understanding of that, an effort in that, and 08:58:13

1 know where that technology was evolving relative to 08:58:16
2 our service. 08:58:17

3 Q. And how often did this come up with the 08:58:21
4 board? 08:58:22

5 A. I would say only -- around Carnegie Mellon 08:58:39
6 and Otto were the only two times where it was 08:58:43
7 discussed in depth. I don't think it was a frequent 08:58:50
8 topic of every board meeting. 08:58:52

9 Q. Are you still with -- on the board at Uber? 08:59:05

10 A. I am not. 08:59:06

11 Q. When did you cease being on the board? 08:59:08

12 A. I believe it was mid to late June of this 08:59:17
13 year. 08:59:17

14 Q. And I may have asked this and, if I did, I 08:59:22
15 apologize. 08:59:22

16 But when did you first become a board member? 08:59:25

17 A. In January of 2011. 08:59:27

18 Q. When you were a member of the board, is it a 08:59:33
19 fair statement to say that you were very engaged with 08:59:37
20 the company? 08:59:41

21 MR. FLUMENBAUM: Objection as to form. 08:59:51

22 THE WITNESS: I'll answer yes. There's a question 08:59:54
23 as to whether -- like relative to what, you know. 08:59:58

24 BY MR. VERHOEVEN: 08:59:58

25 Q. Is it fair to say that you were the most 09:00:00

1 engaged board member with respect to Uber? 09:00:03

2 MR. FLUMENBAUM: Objection as to form. 09:00:14

3 THE WITNESS: It's possible. It would be 09:00:15

4 conjecture from my point solely because I don't know 09:00:19

5 of all the other meetings that the other board members 09:00:22

6 may or may not have been having. 09:00:24

7 BY MR. VERHOEVEN: 09:00:24

8 Q. Do you feel as though you were the most 09:00:26

9 engaged board member? 09:00:28

10 MR. BRILLE: Objection; form. 09:00:29

11 MR. FLUMENBAUM: Objection as to form. 09:00:29

12 THE WITNESS: It's possible. 09:00:32

13 BY MR. VERHOEVEN: 09:00:32

14 Q. Can you think of anyone else on the board who 09:00:35

15 was more engaged than you? 09:00:38

16 A. No. 09:00:41

17 Q. You were also -- in addition to being a 09:00:45

18 member of the board of directors, you were also on the 09:00:48

19 compensation committee; is that right? 09:00:50

20 A. That is correct. 09:00:51

21 Q. And what was your role on the compensation 09:00:55

22 committee? 09:00:58

23 A. Compensation committee would look over all 09:01:02

24 material compensation requests for new hires. We'd 09:01:11

25 get involved in review process, bonus determination. 09:01:20

1 Q. Okay. Anything else, generally? 09:01:24

2 A. Look after the long-term compensation 09:01:30

3 structure of the company and how those programs work 09:01:34

4 and are set up, how they scale. 09:01:37

5 Q. Were you on any other committees at Uber 09:01:41

6 besides the compensation committee? 09:01:43

7 A. I joined the audit committee in, I believe, 09:01:48

8 March. It might have been February. Sometime in 09:01:53

9 the -- early 2017. 09:01:55

10 Q. You said the audit committee? 09:01:59

11 A. Yes. 09:01:59

12 Q. And what were your responsibilities on the 09:02:02

13 audit committee? 09:02:04

14 A. To interface with PwC, our lead auditor, to 09:02:10

15 review the status of the audits. To interface with 09:02:21

16 the internal audit function. To interface with the 09:02:25

17 compliance function. To work with the other members 09:02:28

18 of the committee on all those topics. 09:02:30

19 Q. What is the compliance function? 09:02:35

20 A. Like many other companies, Uber has a chief 09:02:41

21 compliance officer that looks after internal 09:02:47

22 investigation, whistle-blower claims, those kind of 09:02:51

23 things. 09:02:52

24 Q. Were you on any other committees when you 09:02:55

25 were working at Uber? 09:02:56

1 A. Yes. 09:02:58

2 MR. FLUMENBAUM: Objection; form. 09:02:59

3 BY MR. VERHOEVEN: 09:02:59

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED]

13 Q. Are you familiar with the fact that the court 09:03:45

14 in the Waymo litigation in the Northern District of 09:03:49

15 California issued a preliminary injunction? 09:03:51

16 MR. FLUMENBAUM: Um -- 09:03:55

17 MR. VERHOEVEN: Just asking if he knows about it. 09:03:58

18 MR. FLUMENBAUM: Right. 09:03:58

19 If your knowledge is solely based on 09:04:00

20 conversations with counsel, then I don't believe you 09:04:04

21 can answer that question. 09:04:06

22 We are -- I'm under instructions to 09:04:09

23 preserve -- by the company that Mr. Gurley is to 09:04:14

24 preserve all privileges that the company has. And I 09:04:17

25 received a letter to that effect, and I'm going to 09:04:20

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1 follow that instruction. 09:04:26

2 But -- so to the extent that you know about 09:04:29

3 the preliminary injunction from other sources other 09:04:32

4 than counsel, and that could include public -- 09:04:38

5 THE WITNESS: Yeah, it was in the media, so I'm 09:04:40

6 aware of it from that. 09:04:43

7 MR. FLUMENBAUM: Okay. 09:04:43

8 BY MR. VERHOEVEN:

9 [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED]

15 Q. All right. Have you exhausted the list of 09:05:16

16 committees that you can recall being on? 09:05:19

17 A. Yes. 09:05:20

18 Q. Is it a fair statement to say that in the 09:05:44

19 years 2016, '15 and until you left the board in '17, 09:05:52

20 that you were in regular contact with Mr. Kalanick 09:05:56

21 about Uber? 09:05:59

22 MR. FLUMENBAUM: Objection as to form. 09:06:00

23 You may answer. 09:06:02

24 THE WITNESS: So certainly he -- we were both 09:06:09

25 present at most board meetings, so we had contact 09:06:13

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1 through that. In terms of one-on-one contact, there 09:06:17
2 would be periods where there would be lots of it, 09:06:20
3 typically around recruiting, that kind of thing, and 09:06:23
4 then there would be periods where there wouldn't be 09:06:26
5 much. So it wasn't consistent through that time 09:06:29
6 frame. 09:06:30

7 BY MR. VERHOEVEN: 09:06:30

8 Q. Around May 2016, is it fair to say that you 09:06:35
9 were in regular contact with Mr. Kalanick concerning 09:06:38
10 his management of Uber? 09:06:41

11 A. I just want to be careful with the definition 09:06:52
12 of "regular." I'd say consistent amount of contact 09:06:56
13 that we have with all the types of companies that we 09:07:00
14 invest in. It wasn't abnormally high or low. 09:07:07

15 Q. When did you first -- you 09:07:13
16 referenced -- withdrawn. 09:07:16

17 You referenced the Otto transaction earlier 09:07:20
18 in your testimony. 09:07:21

19 A. Um-hum. 09:07:22

20 Q. When did you first learn about the 09:07:24
21 possibility of that transaction? 09:07:26

22 A. Shortly before the board approved it. 09:07:30

23 Q. When did the board approve it? 09:07:34

24 A. I don't have the date in front of me. 09:07:37

25 Q. Who told you about it before the board 09:07:45

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1 approved it? How did you learn about it? 09:07:47

2 A. I don't have a specific recollection. [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] And that may have happened in that 09:08:06

7 case. I don't have a specific recollection, [REDACTED] [REDACTED]

[REDACTED] [REDACTED] 09:08:11

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 MR. VERHOEVEN: Let's get out the board . . . this 09:08:51

21 been previously marked? 09:08:53

22 MR. JUDAH: It has been. 09:08:57

23 MR. VERHOEVEN: Can we mark another one? 09:09:00

24 MR. JUDAH: Yes. 09:09:01

25 MR. VERHOEVEN: Can you mark this as Exhibit 910. 09:09:06

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1 (Plaintiff's Exhibit 910 was marked.) 09:09:35

2 BY MR. VERHOEVEN:

3 Q. Mr. Gurley, take a look at Exhibit 910. 09:09:38

4 And my first question will be, do you 09:09:41

5 recognize this document? 09:09:44

6 (Witness reviews document.) 09:10:13

7 A. Yes, I believe these are the slides that were 09:10:15

8 presented to the board in that meeting that we were 09:10:18

9 just discussing. 09:10:19

10 Q. The meeting in which the Otto transaction was 09:10:22

11 approved? 09:10:23

12 A. Yes. 09:10:23

13 Q. It says, [REDACTED] 09:10:27

14 What does [REDACTED] refer to? 09:10:29

15 A. I don't have any data on that topic. 09:10:31

16 Q. Would it be fair to conclude that it refers 09:10:34

17 to the Otto transaction? 09:10:36

18 A. Yes. 09:10:36

19 Q. And it's dated April 11th, 2016. 09:10:40

20 Do you see that? 09:10:41

21 A. Yes. 09:10:41

22 Q. Is that the day in which the board approved 09:10:45

23 the Otto transaction? 09:10:46

24 A. I would presume so. 09:10:54

25 Q. The second page -- direct your attention to 09:10:57

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[illegible]

16	You may answer.	09:11:54
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Category	Item	Value
Category 1	Item 1.1	100
	Item 1.2	200
	Item 1.3	300
	Item 1.4	400
	Item 1.5	500
Category 2	Item 2.1	150
	Item 2.2	250
	Item 2.3	350
	Item 2.4	450
	Item 2.5	550

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 09:12:26

[REDACTED]

[REDACTED]

[REDACTED]

8 MR. FLUMENBAUM: Objection as to form. 09:12:43

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 BY MR. VERHOEVEN: 09:13:00

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 Do you see that? 09:13:43

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1 A. Yes. 09:13:43

2 MR. FLUMENBAUM: [REDACTED] 09:13:47

3 BY MR. VERHOEVEN:

4 Q. [REDACTED] 09:13:48

5 Do you see that? 09:13:49

6 A. Yes, I do. 09:13:50

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Q. You understood at the time that Uber was 09:15:03

formed by former employees of Waymo/Google? 09:15:08

MR. BRILLE: Objection; form. 09:15:08

You said, "Uber." 09:15:10

MR. VERHOEVEN: Thank you for catching that. 09:15:14

BY MR. VERHOEVEN: 09:15:14

MR. FLUMENBAUM: Objection as to form. 09:15:25

You may -- 09:15:25

BY MR. VERHOEVEN: 09:15:34

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1 MR. BRILLE: Objection; form.

09:16:14

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 BY MR. VERHOEVEN:

09:16:28

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 MR. FLUMENBAUM: Objection as to form.

09:17:35

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1 MR. BRILLE: Same objection.

09:17:39

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:18:06

9 BY MR. VERHOEVEN:

09:18:06

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21	MR. BRILLE: Objection; form.	09:20:09
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

3 BY MR. VERHOEVEN:

09:20:27

6 MR. FLUMENBAUM: Objection as to form.

09:20:43

11 BY MR. VERHOEVEN:

09:20:52

15 MR. BRILLE: Objection; form.

09:21:19

19 BY MR. VERHOEVEN:

09:21:25

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1 MR. FLUMENBAUM: Objection as to form. 09:24:03

2 MR. BRILLE: Same objection. 09:24:05

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

6 BY MR. VERHOEVEN: 09:24:12

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

10 MR. FLUMENBAUM: Objection as to form. 09:24:29

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

16 BY MR. VERHOEVEN: 09:24:52

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 MR. FLUMENBAUM: Object to form. 09:26:19

15 MR. BRILLE: Object to form. 09:26:20

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 28

19 BY MR. VERHOEVEN: 09:26:28

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 MR. BRILLE: Objection. 09:27:13

7 I'm just going to instruct the witness, 09:27:16

8 Mr. Gurley, to the extent that it would require you to 09:27:18

9 disclose conversations that you had with lawyers about 09:27:21

10 that issue, I would instruct you not to answer. If 09:27:24

11 you can answer the question without disclosing such 09:27:27

12 communications, you may answer the question. 09:27:29

13 MR. FLUMENBAUM: We're talking specifically about 09:27:30

14 the board meeting. 09:27:31

15 MR. BRILLE: It is, correct. 09:27:33

16 MR. FLUMENBAUM: So -- 09:27:33

17 MR. BRILLE: So just so you have that -- 09:27:36

18 MR. FLUMENBAUM: We're just focused on the board 09:27:39

19 meeting. 09:27:39

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

4 BY MR. VERHOEVEN: 09:28:23

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 MR. BRILLE: I'm going to interrupt here. 09:28:44

11 THE WITNESS: Okay.

12 MR. BRILLE: And I'm going to instruct the witness 09:28:46

13 not to answer the question. 09:28:48

14 The due diligence effort, as you know, 09:28:49

15 Charlie, has -- privilege has been asserted over that. 09:28:53

16 Whether --

17 MR. VERHOEVEN: You don't need to make a speech. 09:28:55

18 You can either instruct or whatnot. I don't need a 09:28:56

19 speech to coach the witness. 09:29:00

20 MR. BOOCK: Can the privilege objections be mutual 09:29:03

21 for all parties as well -- 09:29:04

22 MR. VERHOEVEN: Sure, if you all want to take a 09:29:05

23 privilege on a meeting we've been talking about for 09:29:06

24 half an hour. 09:29:08

25 MR. BRILLE: First of all, there's no coaching 09:29:10

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1 going on, so don't accuse me of that. 09:29:14

2 MR. VERHOEVEN: Well, then don't do it. 09:29:16

3 MR. BRILLE: Don't accuse me of that, Charlie. 09:29:16

4 Okay. I'm lodging a privilege objection and I'm going 09:29:19

5 to instruct the witness not to answer the question.

6 Don't throw around false accusations in depositions. 09:29:25

7 MR. VERHOEVEN: Then just either instruct or 09:29:26

8 don't. You don't need to explain your reasons. 09:29:30

9 BY MR. VERHOEVEN: 09:29:30

10 Q. So are you going to follow the instruction 09:29:35

11 not to answer that question? 09:29:37

12 MR. FLUMENBAUM: I think we have to until the 09:29:38

13 judge clarifies it. 09:29:40

14 [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 MR. VERHOEVEN: Well, we'll see. 09:29:56

20 MR. FLUMENBAUM: All right. 09:29:57

21 BY MR. VERHOEVEN: 09:29:57

22 Q. So what did Mr. Kalanick say about the due 09:30:05

23 diligence effort at the meeting? 09:30:06

24 MR. BRILLE: Same instruction. 09:30:07

25 BY MR. VERHOEVEN: 09:30:07

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. What was the third party looking for? 09:30:27

7 MR. BRILLE: Same instruction. 09:30:28

8 Do not answer. 09:30:29

9 BY MR. VERHOEVEN: 09:30:29

10 Q. Was the subject of the due diligence whether 09:30:32

11 or not there had been a violation of -- withdrawn. 09:30:37

12 Was the substance of the due diligence 09:30:39

13 whether or not these key employees had taken IP from 09:30:47

14 their former employer? 09:30:48

15 MR. BRILLE: Same instruction. 09:31:01

16 BY MR. VERHOEVEN: 09:31:01

17 Q. Did you say anything about the subject of 09:31:03

18 indemnification at the meeting? 09:31:11

19 MR. BRILLE: Same instruction. It's the same 09:31:16

20 instruction. 09:31:17

21 To the extent he's talking about it with his 09:31:19

22 lawyers -- 09:31:20

23 MR. VERHOEVEN: Do you want to confer with him? 09:31:23

24 I'll go off the record if you want to. 09:31:25

25 MR. FLUMENBAUM: He's not talking about 09:31:26

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1 communications with lawyers or not. 09:31:28

2 MR. BRILLE: I don't know if he is or not. If 09:31:30

3 he's --

4 MR. VERHOEVEN: Let's go off the record. 09:31:31

5 MR. FLUMENBAUM: There's no reason to go off the 09:31:33

6 record. 09:31:33

7 MR. BRILLE: I'm going to instruct. The 09:31:35

8 instruction stands. 09:31:39

9 MR. FLUMENBAUM: To the extent that you recall 09:31:44

10 saying something to the board as a whole which is not 09:31:47

11 based on conversations with counsel, you can answer 09:31:50

12 that question. I don't believe that -- 09:31:53

13 MR. BRILLE: If it's not based -- I'm still 09:31:55

14 concerned about the disclosure of the privileged 09:31:58

15 discussions in this context. 09:31:59

16 MR. FLUMENBAUM: I've already said that we're 09:32:01

17 going to follow your instruction on that. 09:32:04

18 MR. BRILLE: Yeah, the whole -- in this case, the 09:32:06

19 whole substance of the disclosure report, privilege 09:32:09

20 has been asserted. We're going to maintain that 09:32:11

21 privilege. I'm instructing the witness not to answer 09:32:13

22 the question. 09:32:14

23 MR. BOOCK: We join in all of that. 09:32:19

24 MR. VERHOEVEN: So you will instruct on any 09:32:20

25 question I ask this witness about -- going forward 09:32:24

1 about this bullet in row that says, [REDACTED] and column 09:32:30

2 that says, [REDACTED] [REDACTED]

3 [REDACTED] 09:32:35

4 MR. BRILLE: I will instruct based on the specific 09:32:38

5 questions you ask, Charlie. And I don't need your 09:32:43

6 colloquy on the record. 09:32:45

7 BY MR. VERHOEVEN: 09:32:45

8 Q. What did you say about the indemnification? 09:32:47

9 MR. BRILLE: Same instructions. 09:32:48

10 BY MR. VERHOEVEN:

11 Q. Do you recall anyone -- you already said 09:32:53

12 that. 09:32:53

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

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HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 MR. BRILLE: Objection as to form. 09:35:48

[REDACTED]

[REDACTED]

[REDACTED]

10 BY MR. VERHOEVEN: 09:35:58

[REDACTED] :00

12 MR. BRILLE: Same objection. 09:36:05

13 MR. FLUMENBAUM: He just objected as to form. You 09:36:07

14 may answer. 09:36:08

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 BY MR. VERHOEVEN: 09:36:28

[REDACTED]

[REDACTED]

[REDACTED]

24 MR. BRILLE: Objection; form. 09:36:42

[REDACTED]

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4

BY MR. VERHOEVEN:

09:36:56

11

MR. FLUMENBAUM: Objection as to form.

09:37:26

15

BY MR. VERHOEVEN:

09:37:33

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09:40:51

09:42:02

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8

BY MR. VERHOEVEN:

09:42:40

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21

MR. FLUMENBAUM: Objection as to form.

09:43:30

22

You may answer.

09:43:32

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 BY MR. VERHOEVEN:

6 Q. I'm just asking -- 09:43:57

7 MR. FLUMENBAUM: You're interrupting. I don't 09:43:58

8 believe Judge Alsup would approve of that. 09:44:08

9 Finish your answer, please.

[REDACTED]

[REDACTED]

12 BY MR. VERHOEVEN: 09:44:11

[REDACTED]

[REDACTED]

15 MR. FLUMENBAUM: Asked and answered. 09:44:15

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 BY MR. VERHOEVEN: 09:44:34

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] 52

2 MR. FLUMENBAUM: Objection as to form. 09:44:56

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 BY MR. VERHOEVEN: 09:45:14

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 Q. On its face, that doesn't make sense, does 09:45:40

19 it? 09:45:40

20 MR. FLUMENBAUM: Objection as to form. 09:45:41

21 MR. BRILLE: Yeah. 09:45:42

22 MR. FLUMENBAUM: Please reword that question. 09:45:44

23 BY MR. VERHOEVEN: 09:45:44

24 Q. On its face, that doesn't make sense, does 09:45:47

25 it? 09:45:47

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 MR. FLUMENBAUM: Objection as to form. 09:45:48

2 MR. BRILLE: Same. 09:45:51

3 THE WITNESS: If -- I can answer, but I'm just 09:45:55

4 going to be -- 09:45:56

5 MR. FLUMENBAUM: Repeat it again. 09:45:58

█ [REDACTED] [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

14 BY MR. VERHOEVEN: 09:46:26

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

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HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 MR. FLUMENBAUM: Objection; form. 09:47:06

[REDACTED]

[REDACTED]

4 BY MR. VERHOEVEN: 09:47:11

[REDACTED]

[REDACTED]

[REDACTED]

8 MR. BRILLE: Objection; form. 09:47:31

[REDACTED]

[REDACTED]

11 BY MR. VERHOEVEN: 09:47:34

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 MR. FLUMENBAUM: Objection as to form. 09:47:49

[REDACTED]

[REDACTED]

[REDACTED]

22 BY MR. VERHOEVEN: 09:47:58

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

3 MR. BRILLE: Let me just interject here. 09:48:13

4 Mr. Gurley, in answering that question, I 09:48:16

5 would ask you not to disclose the content or the 09:48:19

6 substance of the due diligence, the results of it or 09:48:22

7 anything else. I will instruct you not to answer 09:48:25

8 that. 09:48:26

9 MR. FLUMENBAUM: If you can answer -- I think 09:48:33

10 you've already said -- 09:48:35

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 BY MR. VERHOEVEN: 09:48:49

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 MR. FLUMENBAUM: Objection; form. 09:49:11

[REDACTED]

[REDACTED]

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 BY MR. VERHOEVEN: 09:49:15

[REDACTED]

[REDACTED]

4 MR. BRILLE: Objection. Instruct not to answer. 09:49:20

5 How many times are you going to ask this and 09:49:23

6 make us instruct? 09:49:24

7 MR. VERHOEVEN: We'll move. Mr. Gurley will have 09:49:36

8 to come back. 09:49:38

9 BY MR. VERHOEVEN: 09:49:38

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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2

BY MR. VERHOEVEN:

09:52:41

10

MR. FLUMENBAUM: Just limit your answer to what

09:53:02

11

was done at the board meeting and not what you may

09:53:06

12

have heard from counsel afterwards.

09:53:08

15

BY MR. VERHOEVEN:

09:53:16

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 MR. BRILLE: Objection to form. 09:54:19

12 THE WITNESS: Ask that again. I'm not sure I 09:54:25

13 understand the question. 09:54:26

14 BY MR. VERHOEVEN: 09:54:26

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 MR. BRILLE: Object to form. 09:54:43

20 MR. FLUMENBAUM: Object to form as well. 09:54:44

[REDACTED]

[REDACTED]

23 BY MR. VERHOEVEN: 09:54:53

[REDACTED]

[REDACTED]

12	MR. BRILLE: Object to form.	09:55:34
13	MR. FLUMENBAUM: Object to form.	09:55:38
14	MR. VERHOEVEN: You can only -- we've already	09:55:40
15	agreed --	09:55:41
16	MR. FLUMENBAUM: We were talking at the same time.	09:55:43
17	MR. BRILLE: We're trying our best.	09:55:45
18	THE WITNESS: Yeah, I'm not sure of the exact	09:55:49
19	wordsmith -- I'm not sure what you're trying to get at	09:55:52
20	that I'm not answering, but I'm open to try it again.	09:55:57
21	MR. FLUMENBAUM: Can I suggest something to you,	09:56:02
22	Mr. --	09:56:02
23	MR. VERHOEVEN: Let's just move on.	09:56:04
24	MR. FLUMENBAUM: Okay.	09:56:04
25	BY MR. VERHOEVEN:	09:56:04

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 MR. BRILLE: Objection, you read that incorrectly. 09:57:05

10 BY MR. VERHOEVEN: 09:57:05

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12 MR. FLUMENBAUM: Again, focused on the board 09:58:31

13 meeting. 09:58:33

[REDACTED]

[REDACTED]

16 BY MR. VERHOEVEN: 09:58:40

[REDACTED]

18 MR. FLUMENBAUM: Objection as to form. 09:58:53

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:59:28

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HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 MR. VERHOEVEN: I'm going to mark as Exhibit 911 10:06:02

16 some highly redacted minutes of special meeting of 10:06:06

17 board of directors, Uber Technologies, Inc., dated 10:06:11

18 April 11th, 2016. 10:06:13

19 (Plaintiff's Exhibit 911 was marked.) 10:06:23

20 MR. BOOCK: Counsel, during a break -- during a 10:06:29

21 break, could you have a copy for Otto Trucking made of 10:06:33

22 the prior exhibit? You're not passing any exhibits 10:06:38

23 down. 10:06:38

24 MR. VERHOEVEN: I'm sorry. I didn't know there 10:06:39

25 were going to be however many people are here. This 10:06:39

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1 is MoFo's offices. I think maybe they could make a 10:06:44
2 copy for you. 10:06:46
3 BY MR. VERHOEVEN: 10:06:46
4 Q. Do you recognize this document? 10:06:49
5 First of all, I'll represent to you that 10:06:52
6 these big blank spaces that say "redacted" were 10:06:57
7 blocked out by counsel for Uber -- 10:07:01
8 A. Okay. 10:07:03
9 Q. -- not by us. 10:07:05
10 A. Okay. Thank you. 10:07:07
11 Q. So do you recognize this document? 10:07:09
12 A. Yes. 10:07:10
13 Q. What is it? 10:07:11
14 A. It's minutes for the board meeting that we 10:07:15
15 just discussed. 10:07:16
16 MR. VERHOEVEN: All right. That's all I have on 10:07:35
17 that. 10:07:35
18 How long have we been going? Does anyone 10:07:42
19 need a break? 10:07:43
20 MR. FLUMENBAUM: Do you want to take a short 10:07:45
21 break? We can take a short break. 10:07:47
22 MR. VERHOEVEN: I'm switching subjects. 10:07:49
23 MR. FLUMENBAUM: Let's take a five-minute break. 10:07:53
24 THE VIDEOGRAPHER: This marks the end of DVD No. 1 10:07:56
25 in the deposition of William Gurley. We're off the 10:07:59

1 record at 10:07 a.m. 10:08:04

2 (Recess taken.) 10:08:04

3 THE VIDEOGRAPHER: Back on the record. This is 10:21:54

4 the beginning of DVD No. 2, and the time is 10:21 a.m. 10:21:59

5 BY MR. VERHOEVEN: 10:21:59

6 Q. Mr. Gurley, when did you learn of the 10:22:03

7 allegations in the complaint filed by Waymo in 10:22:07

8 District Court in California? 10:22:08

9 A. I don't have any recollection of knowing 10:22:16

10 about it prior to it being a public event. 10:22:21

11 Q. So you learned about it from the press? 10:22:24

12 A. It's my recollection. There's a chance we 10:22:27

13 were notified as a board earlier, but I don't have 10:22:30

14 recollection of that. 10:22:31

15 Q. Did you know that this might happen? 10:22:35

16 A. I suppose. I mean, anybody can sue anybody, 10:22:49

17 so I guess there's a knowledge that it could happen, 10:22:52

18 but I wasn't anticipating it happening. 10:22:55

19 Q. Did you read the complaint? 10:23:03

20 A. I don't think I read the detailed complaint. 10:23:07

21 Q. Did you learn what the allegations were? 10:23:10

22 MR. FLUMENBAUM: Objection. 10:23:11

23 And if you learned it from talking to 10:23:14

24 counsel -- 10:23:16

25 THE WITNESS: Right. 10:23:18

1 MR. FLUMENBAUM: -- just say that you can't answer 10:23:20
2 that question. 10:23:21
3 MR. VERHOEVEN: Can we have a yes or no and then 10:23:23
4 he can answer if he learned it from counsel, so I know 10:23:26
5 if he learned about it in the first place? 10:23:29
6 MR. BRILLE: Yes. 10:23:31
7 BY MR. VERHOEVEN: 10:23:31
8 Q. Did you learn about the allegations of the 10:23:34
9 complaint? 10:23:35
10 A. Yes. 10:23:35
11 Q. And when was that? 10:23:36
12 A. To the best of my recollection, around the 10:23:39
13 time that it was filed and went public. 10:23:42
14 Q. And what was your understanding of those 10:23:44
15 allegations? 10:23:45
16 MR. FLUMENBAUM: Do you have any understanding 10:23:46
17 other than through counsel? 10:23:47
18 THE WITNESS: From what I've read in the press. 10:23:50
19 MR. FLUMENBAUM: You want him to answer based on 10:23:55
20 his knowledge through the press? 10:23:57
21 MR. VERHOEVEN: I want him to answer the question, 10:24:00
22 if he can. 10:24:01
23 THE WITNESS: Based on my knowledge from reading 10:24:02
24 articles in the press, there were claims of trade 10:24:07
25 secret theft and solicitation of employees and 10:24:14

1 specific accusations related to the downloading of the 10:24:20
2 14,000 or so files. 10:24:23
3 BY MR. VERHOEVEN: 10:24:23
4 Q. Did you speak with anyone at Uber about the 10:24:27
5 veracity of that allegation about the 14,000 files 10:24:30
6 being downloaded? 10:24:32
7 MR. FLUMENBAUM: Can he answer yes? 10:24:35
8 MR. BRILLE: He can answer yes, and then we'll 10:24:37
9 take it a step at a time. Or no, as the case may be. 10:24:45
10 THE WITNESS: When the company the size of Google 10:24:49
11 sues one of the companies you're on the board of, I'm 10:24:52
12 100 percent certain that discussions ensued. I don't 10:24:55
13 have specific recollection of -- a detailed 10:24:59
14 recollection of a specific discussion. I'm sure there 10:25:05
15 were many. 10:25:06
16 BY MR. VERHOEVEN: 10:25:06
17 Q. Did you discuss it with any nonlawyers, such 10:25:08
18 as perhaps, Mr. Kalanick? 10:25:11
19 A. I don't recall having a specific one-on-one 10:25:14
20 conversation with Travis about this topic. 10:25:20
21 Q. Do you remember any discussions you had where 10:25:22
22 there weren't lawyers in the room? 10:25:25
23 A. Not specifically. 10:25:26
24 Q. So you can't say one way or another whether 10:25:31
25 you had any conversations with -- 10:25:33

1 A. I think it's highly likely. I just don't 10:25:36
2 recall the details of any specific conversation. 10:25:39
3 Q. Tell me about what you recall about these 10:25:41
4 conversations. 10:25:42
5 MR. FLUMENBAUM: Again, exclude anything that -- 10:25:47
6 THE WITNESS: With a lawyer. 10:25:49
7 MR. FLUMENBAUM: -- you had with counsel. 10:25:50
8 BY MR. VERHOEVEN: 10:25:50
9 Q. So the question is: Did you ask Travis or 10:25:54
10 anybody else at Uber about the veracity of the 10:25:58
11 allegations concerning Levandowski's downloading of 10:26:03
12 the 14,000 files? 10:26:04
13 A. There were numerous discussions that involved 10:26:07
14 company counsel, external counsel that I presume are 10:26:12
15 privileged, numerous. What I'm struggling to 10:26:16
16 recollect is if I had conversations with nonattorneys 10:26:20
17 about what you're asking, and I don't have specific 10:26:25
18 recollection. 10:26:26
19 Q. Well, did you have any conversations -- 10:26:31
20 A. Highly likely. 10:26:32
21 Q. Well, what do you remember saying in those 10:26:35
22 circumstances? 10:26:37
23 MR. FLUMENBAUM: Again, limit your answer to 10:26:39
24 conversations where counsel was not present, to the 10:26:42
25 extent you can remember those. 10:26:44

1 THE WITNESS: I'd be reaching. I don't have 10:26:48
2 specific recollection of -- it's highly likely it 10:26:54
3 happened because it's such a critical and meaningful 10:26:57
4 event. The substantive conversations are much more 10:27:01
5 likely to have been with the attorneys because of the 10:27:04
6 nature of the event. 10:27:05
7 BY MR. VERHOEVEN: 10:27:05
8 Q. So you're saying the only conversations you 10:27:07
9 can recall are with attorneys? 10:27:09
10 A. Yes. 10:27:09
11 Q. But you would agree that the filing of the 10:27:25
12 complaint was a highly critical event; right? 10:27:35
13 A. Yes. 10:27:35
14 Q. When did you learn -- let me back up. 10:27:47
15 Did there come a point when you learned that 10:27:52
16 Mr. Levandowski was asserting the Fifth Amendment? 10:27:55
17 A. Yes. 10:27:55
18 Q. And when did you learn that? 10:27:59
19 A. I don't have any recollection of knowing that 10:28:07
20 ahead of it being general public knowledge. 10:28:10
21 Q. Did you learn it from the press then? 10:28:13
22 A. It's possible. 10:28:14
23 Q. What was your reaction to that? 10:28:18
24 A. It -- it's not a topic that I had much 10:28:28
25 familiarity with, so my reaction was to try to find 10:28:32

1 out whether it was common or not and why it was 10:28:34
2 happening and, you know, what the company's response 10:28:39
3 should be. 10:28:40
4 Q. So you weren't concerned when you read it? 10:28:43
5 A. I didn't say that. 10:28:44
6 Q. Were you concerned when you read it? 10:28:47
7 A. I was unaware of how to react to it, and so I 10:28:53
8 sought knowledge to have a broader understanding of 10:28:56
9 it. 10:28:57
10 Q. You know generally what taking the Fifth is; 10:29:01
11 right? 10:29:01
12 A. Yeah, but I didn't have a prior knowledge as 10:29:05
13 to what it meant in this situation. But then I sought 10:29:10
14 that out. 10:29:11
15 Q. Well, you knew when you take the Fifth, 10:29:13
16 you're refusing to answer questions -- 10:29:15
17 A. I understand. 10:29:16
18 Q. -- on the ground that you might incriminate 10:29:19
19 yourself; right? 10:29:21
20 A. I understand. 10:29:22
21 Q. And you knew that at the time? 10:29:23
22 A. I did. I didn't have a -- I didn't have a 10:29:27
23 full understanding of the -- how unusual -- I didn't 10:29:34
24 have an understanding in that context, but then I did 10:29:37
25 shortly thereafter. 10:29:38

1 Q. And were you concerned about it? 10:29:40

2 A. Yes. 10:29:40

3 Q. Did you do anything about it? 10:29:45

4 A. I asked a lot of questions about him doing 10:29:51

5 that and what the proper response from the company 10:29:54

6 should be. 10:29:56

7 Q. And what response did you get from the 10:29:58

8 company? 10:29:59

9 MR. BRILLE: Objection. 10:29:59

10 I'm going to instruct the witness that to the 10:30:02

11 extent it would call for you to disclose 10:30:05

12 attorney-client privilege communications, that you 10:30:07

13 exclude those from your answer. 10:30:09

14 MR. BOOCK: And I would agree that Otto Trucking 10:30:09

15 joins in all of Uber and Otto's objections.

16 MR. FLUMENBAUM: Can you answer that question 10:30:19

17 without divulging conversations that you had with 10:30:22

18 counsel for Uber? 10:30:25

19 THE WITNESS: So as I attempted to understand the 10:30:33

20 situation more broadly and talked to our own 10:30:40

21 counsel -- 10:30:43

22 MR. FLUMENBAUM: You can't talk about your own 10:30:45

23 counsel, conversations with your own counsel. 10:30:48

24 THE WITNESS: At any rate, I came to believe that 10:30:51

25 the appropriate action in a situation like this would 10:30:54

1 be for the company to terminate based on taking the 10:30:57
2 Fifth. 10:30:59
3 BY MR. VERHOEVEN: 10:30:59
4 Q. Okay. And what was the time -- what was the 10:31:03
5 span of time from when you first read about it in the 10:31:08
6 press to when you came to that conclusion? 10:31:10
7 A. To the best of my recollection, a couple 10:31:17
8 weeks. 10:31:18
9 Q. And did you express that view? 10:31:26
10 A. Yes. 10:31:26
11 Q. To whom? 10:31:30
12 A. There were some conversations with members of 10:31:33
13 the executive team. I don't remember exactly who or 10:31:36
14 when. There's some conversations with legal that are 10:31:40
15 privileged. But I also expressed it to the board. 10:31:45
16 Q. What do you remember about any discussions 10:31:50
17 with the executive team on this subject? 10:31:53
18 A. There were members of the executive team that 10:32:02
19 also agreed that termination was the right course of 10:32:06
20 action. 10:32:06
21 Q. And who were those members? 10:32:08
22 A. I don't recall specifically. I talked to a 10:32:11
23 lot of executive team members. 10:32:13
24 Q. Were there members who did not think that 10:32:16
25 that was the right course of action? 10:32:18

1 A. I don't recall any. 10:32:33

2 Q. Who comprised the executive team at that 10:32:38

3 time? 10:32:38

4 A. I don't know if I'll get them all. [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] I'm 10:33:26

9 probably leaving somebody out. 10:33:28

10 Q. Was Travis on the team? 10:33:30

11 A. Yeah, I mean, he's CEO, so, yeah. [REDACTED] 10:33:37

12 may have left by then. 10:33:39

13 Q. Did Mr. Kalanick agree, when you expressed 10:33:45

14 this to the executive team, that Mr. Levandowski 10:33:48

15 should be terminated? 10:33:52

16 A. I don't recall if I had a direct discussion 10:33:55

17 with him, although probably at a board level, it was 10:33:58

18 the general understanding of the team that he did not 10:34:04

19 want to terminate Anthony. 10:34:06

20 Q. Do you recall what the reasons -- that he 10:34:17

21 stated for why he did not -- 10:34:19

22 A. Yeah, the statement I remember is that he 10:34:21

23 didn't do anything wrong, so why should we terminate 10:34:24

24 him? 10:34:25

25 Q. And what was said in response to that? And 10:34:32

1 if you can recall, who said it? For example, did 10:34:42
2 someone say, then why is he taking the Fifth? 10:34:45
3 MR. BRILLE: Object to form. 10:34:47
4 THE WITNESS: I can certainly say that my opinion 10:34:53
5 at that moment in time was that his taking the Fifth 10:34:56
6 should result in his termination, based on my best 10:35:02
7 knowledge of how that situation should be dealt with. 10:35:06
8 BY MR. VERHOEVEN: 10:35:06
9 Q. And did -- you referenced conversations with 10:35:10
10 the board on this subject? 10:35:12
11 A. Yes. 10:35:12
12 Q. How many such conversations were there? 10:35:16
13 A. I can't remember specifically, but my general 10:35:21
14 recollection is that it spanned multiple board 10:35:24
15 meetings. 10:35:31
16 Q. And your position to the board was that he 10:35:34
17 should be terminated? 10:35:35
18 A. Yes. 10:35:35
19 Q. And you made that clear on the first of these 10:35:41
20 multiple board meetings? 10:35:43
21 A. Once I'd gotten up to speed and had proper 10:35:48
22 knowledge of what I thought was the best to do, 10:35:55
23 which -- as I said earlier, there was a time window 10:35:58
24 where that happened. So it wasn't -- my voicing of 10:36:06
25 this opinion wasn't immediate, like right after he 10:36:09

1 pled the Fifth. It took me a while to ascertain the 10:36:14
2 right answer for this situation. 10:36:16

3 Q. Did you explain to the board why you thought 10:36:18
4 he should be terminated? 10:36:19

5 A. Yes. 10:36:19

6 Q. What did you say? 10:36:21

7 A. I said, based on all the research I've done, 10:36:25
8 that that's the appropriate action for a company at 10:36:29
9 this moment in time, when someone pleads the Fifth. 10:36:32

10 Q. And when you say "research" that you've done, 10:36:34
11 can you summarize what you did? 10:36:36

12 A. Well, I want to be careful. Some of those 10:36:38
13 conversations were me reaching out to people who were 10:36:41
14 experienced on those matters, which would inherently 10:36:45
15 go to lawyers. 10:36:46

16 Q. Can you identify the lawyers that you 10:36:48
17 consulted? 10:36:49

18 A. Certainly Steve Spurlock, who is a lawyer 10:36:54
19 that works for Benchmark. 10:36:57

20 Q. Any outside counsel? 10:37:01

21 A. He may have reached out. I don't know 10:37:06
22 specifically who he talked to. 10:37:09

23 MR. VERHOEVEN: And I assume, Counsel, you'll 10:37:12
24 instruct if I ask about the substance of his 10:37:15
25 conversation? 10:37:16

1	MR. FLUMENBAUM: Correct.	10:37:18
2	BY MR. VERHOEVEN:	10:37:18
3	Q. Any other things you did to research besides	10:37:25
4	talk to Steve Spurlock?	10:37:33
5	A. Not that I have specific recollection of, but	10:37:35
6	I'm sure I -- I did as much work as I did to come up	10:37:42
7	to that point of view. I just don't remember exactly	10:37:45
8	who I talked to.	10:37:46
9	Q. Did you read the complaint?	10:37:48
10	A. I don't have -- I don't have memory of	10:37:51
11	reading the exact complaint. I may have, but I don't	10:37:55
12	remember.	10:37:55
13	Q. Did you read the motion for preliminary	10:37:57
14	injunction?	10:37:58
15	A. It's possible, but I don't recall precisely.	10:38:03
16	Q. Do you remember reading any legal pleadings	10:38:07
17	that were filed in around the time you were doing your	10:38:10
18	research?	10:38:11
19	A. I certainly made myself aware of the issues.	10:38:23
20	I just don't know if it was precisely by reading the	10:38:27
21	complaint.	10:38:28
22	Q. Did you have an understanding as to why, when	10:38:31
23	someone asserts the Fifth Amendment, you thought they	10:38:34
24	should be terminated?	10:38:36
25	MR. FLUMENBAUM: Objection as to form.	10:38:42

1 BY MR. VERHOEVEN: 10:38:42

2 Q. Let me withdraw that. 10:38:44

3 Did you have an understanding as to the 10:38:45

4 reasons why, in these circumstances here, when 10:38:48

5 Mr. Levandowski asserted the Fifth Amendment, that he 10:38:52

6 should be terminated? 10:38:53

7 A. Yeah, as I understood a couple of things, 10:38:56

8 one, that that was generally considered to be best 10:39:00

9 practice and so that's a reason in and of itself. I 10:39:04

10 believe that he is required to be cooperative as part 10:39:09

11 of indemnity claims and that kind of thing, so this 10:39:16

12 is, by definition, being noncooperative. 10:39:19

13 And there was also -- as I'm sure you're 10:39:34

14 aware, there were assertions by the judge in the case 10:39:37

15 that suggested that he had a strong bias for that 10:39:42

16 action. 10:39:43

17 Q. For what action? 10:39:44

18 A. For terminating. That's my interpretation of 10:39:48

19 it. 10:40:04

20 Q. Did there come a time when you learned that 10:40:06

21 Mr. Levandowski did, indeed, download the 14,000 10:40:11

22 files? 10:40:12

23 MR. BRILLE: Object to the form. 10:40:23

24 THE WITNESS: I don't have any knowledge of that 10:40:25

25 that wouldn't qualify for privileged conversation. 10:40:30

1	BY MR. VERHOEVEN:	10:40:30
2	Q. Well, yes or no?	10:40:32
3	MR. FLUMENBAUM: He's answered your question. I'm	10:40:36
4	going to tell him -- instruct him not to answer on the	10:40:40
5	basis of privilege.	10:40:41
6	BY MR. VERHOEVEN:	10:40:41
7	Q. You had -- you learned something along those	10:40:45
8	lines from counsel; is that what you're saying?	10:40:48
9	MR. FLUMENBAUM: Objection as to form. And I'm	10:40:50
10	going to instruct him not to answer that question on	10:40:53
11	privilege grounds.	10:40:55
12	MR. BRILLE: Same instruction.	10:40:58
13	MR. VERHOEVEN: Just asking him about his state of	10:41:01
14	mind.	10:41:02
15	MR. FLUMENBAUM: Well, you're not doing it	10:41:04
16	appropriately.	10:41:04
17	MR. VERHOEVEN: Okay. Tell me how to do it	10:41:06
18	appropriately.	10:41:07
19	MR. FLUMENBAUM: First of all, you don't have a	10:41:09
20	time frame. You have not excluded conversations with	10:41:12
21	counsel. You have not excluded events that have	10:41:15
22	occurred subsequent, so -- you know.	10:41:19
23	MR. VERHOEVEN: I asked him if there came a time	10:41:21
24	when he learned --	10:41:23
25	MR. FLUMENBAUM: Ask your question.	10:41:24

1 MR. VERHOEVEN: Okay. I'll repeat it. 10:41:26

2 BY MR. VERHOEVEN: 10:41:26

3 Q. Did there come a time, Mr. Gurley, when you 10:41:29

4 learned that Mr. Levandowski, in fact, did download 10:41:33

5 the 14,000 files? 10:41:35

6 MR. BRILLE: Mr. Gurley, in answering that 10:41:37

7 question, I'm going to instruct you not to answer the 10:41:39

8 question if the only way you can answer the question 10:41:42

9 is to divulge the content of attorney-client 10:41:46

10 communications. 10:41:47

11 THE WITNESS: Okay. 10:41:49

12 MR. FLUMENBAUM: Instruction stands. 10:41:51

13 MR. VERHOEVEN: All right. It will go on our 10:41:53

14 motion. Can I ask him what time he learned it? 10:41:57

15 MR. FLUMENBAUM: If he learned it. 10:41:59

16 BY MR. VERHOEVEN: 10:41:59

17 Q. Okay. If you learned it, can you tell me 10:42:02

18 approximately when you learned it? 10:42:04

19 MR. BRILLE: I'm going to object to the form. 10:42:07

20 Same objection -- I'm going to instruct. The question 10:42:10

21 is improper and seeks to elicit attorney-client 10:42:13

22 privileged discussions. The way you're phrasing it is 10:42:16

23 the way it seeks to elicit that type of information. 10:42:19

24 MR. VERHOEVEN: His counsel just suggested that. 10:42:22

25 MR. BRILLE: No, he did not. 10:42:28

1 MR. VERHOEVEN: I thought you said that if he 10:42:29
2 learned it -- 10:42:30
3 MR. FLUMENBAUM: Why don't you start over and -- 10:42:33
4 BY MR. VERHOEVEN:
5 Q. If you learned that Mr. Levandowski did, 10:42:37
6 indeed, download the 14,000 files, when did you learn 10:42:41
7 it? 10:42:41
8 MR. BRILLE: Object to the form of the question 10:42:43
9 instruct the witness not to answer. As phrased, it is 10:42:45
10 designed to elicit attorney-client privileged 10:42:48
11 information. 10:42:49
12 MR. FLUMENBAUM: Correct, I agree with that. 10:42:52
13 MR. VERHOEVEN: The fact of when the board learned 10:42:54
14 about something? 10:42:54
15 MR. BRILLE: As phrased, you are seeking to -- 10:42:58
16 MR. FLUMENBAUM: You are asking questions -- now 10:43:00
17 you're saying the board. That's not part of your 10:43:03
18 question. 10:43:04
19 MR. VERHOEVEN: Okay. 10:43:05
20 MR. FLUMENBAUM: Please start again. 10:43:07
21 BY MR. VERHOEVEN: 10:43:07
22 Q. Did there come a time when the board learned 10:43:10
23 that Mr. Levandowski did, in fact, download the 14,000 10:43:13
24 files? 10:43:14
25 MR. BRILLE: Mr. Gurley, I'm going to give you the 10:43:16

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1 same instruction. To the extent you can answer that 10:43:18
2 question without revealing the content of 10:43:20
3 attorney-client privileged communications, you may do 10:43:23
4 so; otherwise, I will instruct you not to answer. 10:43:26
5 BY MR. VERHOEVEN: 10:43:26
6 Q. It's a yes-or-no question? 10:43:31
7 MR. FLUMENBAUM: He can't answer that question as 10:43:32
8 worded, based on the instruction from Uber's counsel. 10:43:37
9 MR. VERHOEVEN: Are you instructing him now? 10:43:39
10 MR. FLUMENBAUM: Correct. 10:43:40
11 MR. VERHOEVEN: Even if there's not -- he learned 10:43:42
12 it through a non-attorney communication? 10:43:44
13 MR. BRILLE: That wasn't the instruction. 10:43:46
14 MR. VERHOEVEN: So that's what I understood the 10:43:48
15 instruction to be, that he could answer if -- 10:43:51
16 MR. FLUMENBAUM: From a non -- from -- 10:43:56
17 MR. VERHOEVEN: Let me ask the question again. 10:43:58
18 BY MR. VERHOEVEN: 10:43:58
19 Q. Did there come a time when the board learned 10:44:01
20 in a board meeting that Mr. Levandowski, in fact, did 10:44:05
21 download the 14,000 files? 10:44:09
22 MR. BRILLE: Same instruction. To the extent that 10:44:12
23 you can answer that question without revealing the 10:44:14
24 content of attorney-client privilege -- 10:44:16
25 THE WITNESS: I'm not aware of a non-privileged 10:44:19

1 discussion where the board shared that knowledge. 10:44:24

2 BY MR. VERHOEVEN: 10:44:24

3 Q. Was there a privileged instance that you 10:44:26

4 can't talk about that exists that's responsive to my 10:44:32

5 question; yes or no? 10:44:34

6 MR. BRILLE: As phrased, it calls for the 10:44:35

7 disclosure of attorney-client privileged information. 10:44:37

8 I instruct you not to answer at all. 10:44:40

9 THE WITNESS: Understood. 10:44:41

10 MR. VERHOEVEN: I'll move on. We've got a good 10:44:45

11 enough record for our motion. 10:44:46

12 BY MR. VERHOEVEN: 10:44:46

13 Q. Let's go back to discussions that we were 10:44:52

14 talking about at the board meeting about the Fifth 10:44:56

15 Amendment. 10:44:56

16 Do you remember that? 10:44:58

17 A. Um-hum. Yes. 10:44:59

18 Q. You had described for me the statements that 10:45:06

19 you made generally at that meeting, or at least that 10:45:09

20 you can recall. 10:45:10

21 A. Right. 10:45:11

22 Q. What did Mr. Kalanick say in response at that 10:45:15

23 meeting? 10:45:17

24 A. To the best of my knowledge, what he said, as 10:45:19

25 I've already stated to you, is that he felt that 10:45:23

1 Anthony hadn't done anything wrong and, therefore, it 10:45:27
2 would be unfair to terminate him for pleading the 10:45:30
3 Fifth. 10:45:31

4 Q. Okay. That was the answer you gave when I 10:45:34
5 asked about conversations with the executive team. So 10:45:36
6 he said the same thing at the board meetings? 10:45:39

7 A. Yes. 10:45:39

8 Q. And did anyone at the board meeting ask the 10:45:43
9 question, then why is he asserting the Fifth Amendment 10:45:46
10 if he didn't do anything wrong? 10:45:49

11 A. I don't know if that question was 10:45:56
12 specifically asked, but I wouldn't be surprised if it 10:45:59
13 was. 10:45:59

14 Q. What discussion do you remember concerning 10:46:04
15 this statement that Mr. Kalanick said about him not 10:46:08
16 doing anything wrong? 10:46:10

17 A. Nothing other than the simple statement. 10:46:21

18 Q. But what do you remember, how the board 10:46:22
19 reacted? Did they say -- he said he didn't do 10:46:26
20 anything wrong. What did the board say in response to 10:46:29
21 that? 10:46:30

22 A. Just because I had better recollection 10:46:33
23 because it was on my mind at the time, my belief was 10:46:39
24 that if he felt compelled to do this, that the board 10:46:43
25 should -- or the company should take action against 10:46:48

1 him and terminate, for the reasons that I've 10:46:50
2 discussed. 10:46:51
3 Q. Right. 10:46:51
4 So -- but I'm asking you specifically, at the 10:46:54
5 board meeting, Kalanick repeated his view -- 10:46:59
6 A. Right.
7 Q. -- that Levandowski didn't do anything 10:47:02
8 wrong -- 10:47:03
9 A. I think I understand your question?
10 I don't remember if there were specific 10:47:06
11 conversations that said, well, if he didn't do 10:47:08
12 anything wrong, why would he plead the Fifth? I don't 10:47:10
13 remember if that happened. It might have. 10:47:13
14 Q. Well, do you remember -- was there response 10:47:15
15 to Mr. Kalanick at the meeting, after he made that 10:47:19
16 statement, just generally? There was a discussion; 10:47:25
17 right? 10:47:26
18 A. Yeah, I think there was a discussion and I 10:47:28
19 think -- and I don't recall exactly who chimed in, but 10:47:32
20 there was others, like me, that felt that taking the 10:47:38
21 Fifth should be dealt with. 10:47:40
22 Q. And who were those people? 10:47:42
23 A. I just said I don't recall exactly who was on 10:47:45
24 that point of view. 10:47:46
25 Q. Do you remember anyone on the board that you 10:47:49

1 can identify? 10:47:50

2 A. I'd be speculating. 10:47:56

3 Q. So as a result -- as a result of the first 10:47:59

4 meeting of the board on this subject, was anything 10:48:05

5 done to Mr. Levandowski? 10:48:09

6 A. Not immediately. 10:48:12

7 Q. Do you remember anything else that was 10:48:20

8 discussed about the Waymo case or Mr. Levandowski 10:48:24

9 during this initial meeting? 10:48:43

10 A. There were generic discussions about how we 10:48:46

11 would respond and who would be representing that kind 10:48:50

12 of thing. There were other discussions that were 10:48:53

13 privileged with those representatives. 10:48:56

14 Q. Anything that wasn't the subject of attorney 10:49:00

15 advice? 10:49:01

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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3

MR. FLUMENBAUM: Objection as to form.

10:51:29

13

BY MR. VERHOEVEN:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 MR. FLUMENBAUM: Objection as to form. 10:53:35

[REDACTED]

[REDACTED]

16 MR. VERHOEVEN: Do you have the board . . . 10:53:59

17 BY MR. VERHOEVEN:

18 Q. Just for authentication purposes, I'm going 10:54:35

19 to show you a document marked as 912. 10:54:38

20 (Plaintiff's Exhibit 912 was marked.) 10:54:50

21 MR. FLUMENBAUM: Can I have a copy? 10:54:51

22 MR. VERHOEVEN: Yes. 10:54:52

23 BY MR. VERHOEVEN: 10:54:52

24 Q. Again, the heavy redactions on this document 10:54:59

25 that block out the document were created by counsel 10:55:07

1 for Uber, so I apologize for that. 10:55:12

2 Can you identify this document, to the extent 10:55:21

3 that it's disclosed? 10:55:22

4 A. It appears to be the minutes from an April 10:55:27

5 10th board meeting. 10:55:28

6 Q. Would you have -- to the extent you can 10:55:36

7 recall -- we're talking about this whole conversation 10:55:40

8 about the Fifth Amendment and whatnot. Would that 10:55:44

9 have been started at least by this April 10th, 2017 10:55:51

10 meeting? 10:55:52

11 A. I don't know. I don't think so. 10:55:59

12 Q. Well, I'll represent that it was public that 10:56:03

13 Mr. Levandowski had taken the Fifth before this time. 10:56:07

14 A. Okay. 10:56:07

15 Q. Does that change your answer? 10:56:09

16 A. No, because I had already mentioned to you 10:56:12

17 that there was -- it took me a while -- my experience 10:56:17

18 set of being involved in companies in this particular 10:56:21

19 situation is low, so it took me a while to get an 10:56:25

20 understanding of what I felt was the right course of 10:56:28

21 action. 10:56:30

22 Q. Do you remember any discussion about the 10:56:35

23 Waymo litigation on April 10th, 2017 board meeting? 10:56:40

24 A. I do not. 10:56:41

25 Q. Okay. There came a time when Uber made a 10:56:57

1 decision to remove Mr. Levandowski from working in the 10:57:03
2 area of LiDAR. 10:57:06
3 Are you familiar with that? 10:57:07
4 A. Um-hum. 10:57:08
5 Q. "Yes"?
6 A. Yes. 10:57:09
7 Q. Were you involved in that decision? 10:57:14
8 A. The board was informed of that decision. I 10:57:23
9 wouldn't say that the board was involved in that 10:57:26
10 decision. I think it was a response to many of the 10:57:36
11 conversations that were being had about what is the 10:57:39
12 appropriate course of action in light of everything 10:57:42
13 that's happened. 10:57:43
14 Q. Do you remember when that decision was made? 10:57:46
15 A. I do not. 10:57:47
16 Q. When the board was apprised of the decision, 10:57:51
17 had the decision been communicated to Levandowski yet? 10:57:57
18 A. I don't know. 10:57:58
19 Q. Did the board approve it or were they just 10:58:00
20 apprised of it after the fact? 10:58:03
21 A. I don't have specific recollection. I don't 10:58:10
22 think that was something that there was a -- like a 10:58:15
23 board vote and approval of. 10:58:17
24 Q. Did you read the preliminary injunction order 10:58:24
25 in this case? 10:58:25

1 A. Not that I recall. 10:58:29

2 Q. You became aware that there was a preliminary 10:58:33

3 injunction; right? 10:58:34

4 A. Um-hum. 10:58:35

5 Q. "Yes"? 10:58:36

6 A. Yes. 10:58:36

7 Q. When did you become aware of that? 10:58:39

8 A. I don't remember the specific date. 10:58:40

9 Q. How did you learn about it? 10:58:45

10 A. I don't know if it was through a process like 10:58:48

11 this or in the press. I don't know. I'm sure it was 10:58:53

12 discussed at some point in the board meeting, but with 10:58:57

13 lawyers present. 10:58:59

14 Q. What was your reaction when you learned of 10:59:01

15 it? 10:59:02

16 A. Just an interpretation of what Google was 10:59:22

17 trying to signal by making that decision, to seek an 10:59:27

18 injunction. 10:59:28

19 Q. Did you -- were you informed of or learned of 10:59:34

20 the reasoning behind the decision in the public 10:59:39

21 opinion issued by the judge? 10:59:41

22 A. State the question again. 10:59:45

23 Q. Did you become aware of the reasoning 10:59:48

24 underlying the decision by the judge to issue a 10:59:53

25 preliminary injunction, which was stated in the actual 10:59:57

1 order that was public? 10:59:58

2 A. I didn't have any perspectives that were 11:00:08

3 outside of a discussion from counsel on that topic. 11:00:13

4 Q. Why didn't Uber fire Mr. Levandowski upon the 11:00:20

5 issuance of the preliminary injunction? 11:00:23

6 A. I can't speak to that because I wasn't in a 11:00:32

7 position to have authority to make that decision. 11:00:35

8 Q. Who was? 11:00:36

9 A. Presumably Travis, the CEO. 11:00:39

10 Q. So the board didn't have authority to direct 11:00:42

11 that -- I thought you -- withdrawn. 11:00:46

12 I thought you previously mentioned that you 11:00:48

13 had recommended that he be terminated -- 11:00:50

14 A. I had. I had. 11:00:52

15 Q. -- at a board meeting. 11:00:53

16 A. Yeah. 11:00:54

17 Q. But the board didn't have authority to order 11:00:56

18 that? 11:00:57

19 A. The board did not order that, if that's your 11:01:00

20 question. 11:01:00

21 Q. But they had the authority to? 11:01:03

22 A. I suppose they could have made a motion and 11:01:06

23 voted to do that. 11:01:08

24 Q. And you encouraged the board to do that? 11:01:11

25 A. I encouraged the board to terminate once I 11:01:13

1 had an understanding of what my interpretation was of 11:01:18
2 him pleading the Fifth. [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED]
5 Q. After the issuance of the preliminary 11:01:36
6 injunction order, did you have any discussions with 11:01:39
7 Mr. Kalanick about terminating Mr. Levandowski? 11:01:42
8 A. Not specifically related to that event. 11:01:47
9 Q. Okay. So it didn't cause you to have any 11:01:50
10 more conversations with Mr. Kalanick? 11:01:54
11 A. No. But I had already determined that I 11:01:56
12 thought the best course of action was termination. So 11:01:58
13 like I was not more compelled; I was already 11:02:02
14 compelled. 11:02:04
15 Q. Did you discuss the preliminary injunction 11:02:05
16 order with Mr. Kalanick and repeat your 11:02:09
17 recommendation? 11:02:10
18 A. Not outside of a privileged conversation, no. 11:02:14
19 Q. Was there a board meeting about the 11:02:19
20 preliminary injunction? 11:02:20
21 A. I don't remember if there was one called. I 11:02:23
22 don't think so. There were lots of board meetings at 11:02:27
23 this moment in time. 11:02:29
24 Q. Do you recall receiving -- withdrawn. 11:02:34
25 Did you ask to see the due diligence report 11:02:39

1 that was referenced in the board 11:02:42

2 meeting -- board -- withdrawn. 11:02:46

3 [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED]

6 MR. FLUMENBAUM: I'll let him answer yes or no to 11:03:00

7 that, but I don't want that to be a waiver. 11:03:02

8 Will you agree to that? 11:03:04

9 MR. VERHOEVEN: Agreed. 11:03:05

10 MR. FLUMENBAUM: You can answer that yes or no. 11:03:06

11 THE WITNESS: Yes. 11:03:08

12 BY MR. VERHOEVEN: 11:03:08

13 Q. Did you ask for it? 11:03:10

14 MR. FLUMENBAUM: Same rule? 11:03:11

15 MR. VERHOEVEN: Yes. 11:03:14

16 BY MR. VERHOEVEN: 11:03:14

17 Q. Yes or no? 11:03:16

18 A. Yes. 11:03:16

19 Q. Did you read it? 11:03:18

20 MR. FLUMENBAUM: Again, same rule? 11:03:20

21 MR. VERHOEVEN: Yes. 11:03:21

22 MR. FLUMENBAUM: You can answer that yes or no. 11:03:24

23 THE WITNESS: Yes. 11:03:26

24 BY MR. VERHOEVEN: 11:03:26

25 Q. And that was around May 12th of this year? 11:03:30

1 MR. FLUMENBAUM: You can answer that yes or no. 11:03:34

2 THE WITNESS: I don't have any notes in front of 11:03:36

3 me. That sounds like it would be in the general time 11:03:38

4 frame, but I . . . it could be off, you know, by a 11:03:45

5 week or two. I don't have the specific date. 11:03:48

6 BY MR. VERHOEVEN: 11:03:48

7 Q. In that range? 11:03:49

8 A. In that range. 11:03:50

9 Q. Why did you ask for it? 11:03:52

10 MR. FLUMENBAUM: Again, I'll let you answer that 11:03:57

11 question, but don't talk about any conversations that 11:04:06

12 you had with either Uber's counsel or your personal 11:04:10

13 counsel at this point. 11:04:14

14 THE WITNESS: As I already referenced, I felt that 11:04:22

15 this litigation, the one we're involved in today, was 11:04:26

16 critical and important to the company. Once I had 11:04:30

17 gotten up to speed on Anthony's decision to plead the 11:04:35

18 Fifth and the fact that we should be terminating, I 11:04:39

19 felt that it was my duty as a board member to try and 11:04:42

20 know as much as possible about this situation so I 11:04:45

21 could advise the company in the best possible way. 11:04:54

22 BY MR. VERHOEVEN: 11:04:54

23 Q. After you read the diligence report, did you 11:04:59

24 take any action based on reading it? Yes or no? 11:05:06

25 MR. FLUMENBAUM: Again, no waiver; correct? 11:05:08

1	MR. VERHOEVEN: Correct.	11:05:10
2	MR. FLUMENBAUM: You can answer that.	11:05:15
3	THE WITNESS: I did not take any immediate	11:05:30
4	specific action related to that.	11:05:35
5	BY MR. VERHOEVEN:	11:05:35
6	Q. What about non-immediate specific action?	11:05:39
7	MR. FLUMENBAUM: Again, I don't want to have to	11:05:54
8	say this. Do we have -- this whole line of	11:05:56
9	questioning, not going to be any argument of the	11:05:59
10	waiver --	11:05:59
11	MR. VERHOEVEN: Agreed. Agreed.	11:06:01
12	MR. FLUMENBAUM: Because I have to obey the waiver	11:06:03
13	rules here.	11:06:04
14	MR. VERHOEVEN: Agreed.	11:06:05
15	MR. FLUMENBAUM: Okay.	11:06:05
16	THE WITNESS: I'm not aware of anything that	11:06:29
17	specifically ties to that investigation in terms of my	11:06:35
18	action.	11:06:36
19	BY MR. VERHOEVEN:	11:06:36
20	Q. You gave a copy of the diligence report to	11:06:39
21	your personal counsel at Paul Weiss; right?	11:06:43
22	MR. FLUMENBAUM: Again?	11:06:45
23	MR. VERHOEVEN: I have a continuing agreement with	11:06:47
24	you.	11:06:48
25	MR. FLUMENBAUM: All right.	11:06:48

1 THE WITNESS: Yes. 11:06:51

2 BY MR. VERHOEVEN: 11:06:51

3 Q. Why did you do that? 11:06:52

4 A. I think it's consistent with what I said 11:06:55

5 before. I was trying to understand the details of the 11:07:02

6 litigation and the situation and make sure that I was 11:07:07

7 as informed as I possibly could be. 11:07:11

8 Q. Were you concerned -- withdrawn. 11:07:14

9 Did you send it to your personal lawyer to 11:07:16

10 make sure that you did the right things with respect 11:07:19

11 to this lawsuit? 11:07:22

12 MR. BRILLE: Object to form. 11:07:28

13 THE WITNESS: Yes. 11:07:29

14 BY MR. VERHOEVEN: 11:07:29

15 Q. Did you send it to him to ensure that you 11:07:33

16 were protected from liability? 11:07:34

17 MR. FLUMENBAUM: Objection. I'm going to instruct 11:07:35

18 him not to answer that. 11:07:40

19 BY MR. VERHOEVEN: 11:07:40

20 Q. Was there any other reason that you sent a 11:07:43

21 copy of this specific report to your personal lawyer? 11:07:47

22 MR. FLUMENBAUM: Other than what he's answered? 11:07:49

23 MR. VERHOEVEN: Yes. 11:07:50

24 THE WITNESS: And just -- you keep saying 11:07:56

25 "personal." Paul Weiss represents Benchmark, our 11:07:59

1 firm. He's not my personal lawyer. 11:08:01

2 BY MR. VERHOEVEN: 11:08:01

3 Q. So he wasn't your personal lawyer? 11:08:04

4 A. Yeah. 11:08:05

5 Q. Okay. Thanks for clarifying that. 11:08:08

6 The question is outstanding. 11:08:11

7 Was there any other reason other than what 11:08:14

8 you testified to -- 11:08:15

9 A. No. 11:08:16

10 Q. And then you gave a copy to 11:08:21

11 Shearman & Sterling; is that right? 11:08:23

12 A. It's possible. 11:08:30

13 Q. Why would you give a copy to 11:08:33

14 Shearman & Sterling? 11:08:34

15 [REDACTED] 11:08:34

16 [REDACTED] 11:08:34

17 Q. I see. 11:08:40

18 MR. VERHOEVEN: Can I get 11:09:05

19 Let's mark as Exhibit 913 a copy of board 11:09:24

20 minutes dated May 15th, 2017. 11:09:28

21 (Plaintiff's Exhibit 913 was marked.) 11:09:47

22 BY MR. VERHOEVEN: 11:09:47

23 Q. Can you identify this, again, 11:09:49

24 redacted-by-Uber document? 11:09:52

25 (Witness reviews document.) 11:10:16

1 A. Okay. 11:10:16

2 Q. Can you identify that for me. 11:10:18

3 A. It's the minutes from a May 15th board 11:10:21

4 meeting of Uber. 11:10:23

5 Q. And you attended that meeting; right? 11:10:25

6 A. Yes. 11:10:25

7 [REDACTED] [REDACTED]

8 [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED]

10 MR. VERHOEVEN: And I assume, Counsel, that if I 11:10:39

11 ask any questions about the substance of that report, 11:10:41

12 you'll instruct the witness not to answer? 11:10:43

13 MR. FLUMENBAUM: That's correct. Based on Uber 11:10:48

14 taking the Fifth on that. 11:10:49

15 MR. VERHOEVEN: Oh, it's their fault. 11:10:52

16 MR. FLUMENBAUM: It's no one's fault. It's either 11:10:54

17 privileged or it's not privileged. 11:10:57

18 BY MR. VERHOEVEN: 11:10:57

19 Q. If you turn to the second page, Mr. Gurley. 11:10:59

20 A. Yes. 11:11:01

21 [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. Did termination occur after this meeting? 11:11:42

7 I'm sorry. 11:11:43

8 Did termination occur as a result of this 11:11:46

9 meeting? 11:11:47

10 A. I don't think so. 11:11:48

11 Q. Why not? 11:11:49

[REDACTED]

[REDACTED]

[REDACTED]

15 Q. Okay. 11:12:06

[REDACTED]

[REDACTED]

18 Q. Is it fair to say that, at this point in 11:12:15

19 time, Mr. Kalanick was aggressively trying to block 11:12:19

20 efforts to terminate Mr. Levandowski? 11:12:22

21 MR. BRILLE: Object to form. 11:12:25

22 THE WITNESS: I can't assert -- I can't qualify 11:12:30

23 the aggressive part, but it is my interpretation that 11:12:34

24 he was not in favor of termination. 11:12:38

25 BY MR. VERHOEVEN: 11:12:38

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1 Q. Was he trying to block it? 11:12:41

2 A. I would say he was arguing that we should 11:12:47

3 not. 11:12:48

4 Q. He was the lead person arguing that; right? 11:12:51

5 A. From my perspective, correct. 11:12:54

6 Q. Was there anyone else on the board arguing 11:12:56

7 that at this point in time? 11:12:58

8 A. I do not recall anyone else having a strong 11:13:02

9 opinion of that on that side of the argument. 11:13:05

10 Q. What about prior board meetings? Did anyone 11:13:09

11 other than Mr. Levandowski [sic] argue that 11:13:13

12 termination was inappropriate -- 11:13:15

13 MR. FLUMENBAUM: Objection as to form. 11:13:17

14 BY MR. VERHOEVEN: 11:13:17

15 Q. -- at the board meetings? 11:13:19

16 MR. FLUMENBAUM: Objection as to form. 11:13:21

17 I think you misspoke. 11:13:22

18 BY MR. VERHOEVEN: 11:13:22

19 Q. Oh. Thank you. 11:13:25

20 What about other prior board meetings? Did 11:13:27

21 anyone other than Mr. Kalanick argue that termination 11:13:30

22 was inappropriate? 11:13:32

23 A. Not that I'm aware of. 11:13:34

24 Q. At this point in time, of this board meeting, 11:13:44

25 Mr. Levandowski was refusing to cooperate with Uber; 11:13:49

1 right? 11:13:49

2 A. That is my interpretation of the pleading the 11:13:54

3 Fifth. 11:13:56

4 Q. So yes? 11:13:57

5 A. Yes. 11:13:57

6 Q. And he had been refusing to cooperate from 11:14:01

7 the beginning of the complaint all the way through 11:14:04

8 this point; right? 11:14:05

9 MR. FLUMENBAUM: Objection as to form. 11:14:12

10 THE WITNESS: I didn't have specific conversations 11:14:15

11 with him. I don't even know if I ever have. And so 11:14:19

12 my interpretation of the noncooperation started with 11:14:23

13 the pleading of the Fifth. 11:14:25

14 BY MR. VERHOEVEN: 11:14:25

15 Q. Okay. 11:14:26

16 A. That's the only knowledge I have. 11:14:28

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 MR. FLUMENBAUM: I don't want you to discuss 11:18:18

7 anything legally -- 11:18:21

[REDACTED]

[REDACTED]

[REDACTED]

11 BY MR. VERHOEVEN: 11:18:27

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 MR. FLUMENBAUM: Objection as to form. 11:19:29

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 BY MR. VERHOEVEN: 11:19:41

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 Q. The end result of this meeting was that the 11:19:57

24 board decided that -- to not terminate him at that 11:20:01

25 point in time; right? 11:20:02

Category	Value	Unit
Category 1	100	Unit
Category 2	100	Unit
Category 3	100	Unit
Category 4	100	Unit
Category 5	100	Unit

12	Q. Okay.	11:20:38
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16	(Plaintiff's Exhibit 914 was marked.)	11:21:14
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18	Q. Take a second and look at that.	11:21:16
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21	A. This is the minutes of the May 22nd meeting	11:21:25
22	of Uber Technologies.	11:21:29

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 MR. VERHOEVEN: Our thing went down. How long 11:27:52

11 have we been going? 11:27:54

12 THE VIDEOGRAPHER: An hour and six minutes. 11:27:56

13 MR. VERHOEVEN: Well, let's just keep going then. 11:28:01

14 BY MR. VERHOEVEN: 11:28:01

15 Q. You said Travis made that recommendation in 11:28:03

16 your last answer. I'm just not clear what you meant 11:28:06

17 by that. 11:28:07

18 A. At the next board meeting after this, at the 11:28:10

19 beginning of the meeting, Travis started by 11:28:12

20 recommending the termination of Anthony, [REDACTED] [REDACTED]

[REDACTED]

22 Q. I see. 11:28:18

23 So it's your belief that the board -- or 11:28:21

24 excuse me. 11:28:22

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 Q. You see -- if you would turn to page with the 11:31:19

19 503 on the back of the control number. 11:31:25

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 MR. FLUMENBAUM: Objection. 11:33:29

2 MR. BRILLE: Objection. 11:33:29

3 MR. FLUMENBAUM: You want to exclude counsel from 11:33:31

4 any discussions with the board? I can't let him 11:33:39

5 answer that question as worded. 11:33:43

6 MR. VERHOEVEN: So you're instructing him on just 11:33:45

7 general statements -- 11:33:47

8 MR. FLUMENBAUM: No, on privilege. 11:33:49

9 BY MR. VERHOEVEN: 11:33:49

10 Q. As of May 22, had the board received -- this 11:34:08

11 is a yes or no. 11:34:08

12 As of May 22, had the board received any 11:34:13

13 report on the veracity of the allegation that 11:34:16

14 Mr. Levandowski had downloaded 14,000 files? 11:34:25

15 MR. FLUMENBAUM: I'm going to instruct him not to 11:34:27

16 answer that question as worded, based on privilege. 11:34:33

17 MR. VERHOEVEN: Is there a way I could word it 11:34:36

18 that you would say is not privileged? 11:34:38

19 MR. FLUMENBAUM: Other than either documents 11:34:44

20 received that are still claimed to be privileged in 11:34:48

21 this situation, did the board receive any reports from 11:34:54

22 anyone other than counsel, and then your . . . 11:34:58

23 MR. VERHOEVEN: Okay. 11:34:59

24 BY MR. VERHOEVEN:

25 Q. Can you answer that question? 11:35:00

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1 MR. FLUMENBAUM: I think you have to rephrase it. 11:35:03
2 MR. VERHOEVEN: I don't want to make a mistake. 11:35:05
3 Let me reread what you said then. 11:35:07
4 BY MR. VERHOEVEN: 11:35:07
5 Q. Other than either documents received that are 11:35:14
6 still claimed to be privileged in this situation, did 11:35:17
7 the board receive any reports from anyone other than 11:35:20
8 counsel with respect to the download of the 14,000 11:35:25
9 files? 11:35:26
10 A. No. 11:35:27
11 Q. And this is a yes or no. 11:35:33
12 Did the board receive a report from counsel 11:35:36
13 on that subject matter? 11:35:38
14 MR. FLUMENBAUM: Instruction not to answer. 11:35:41
15 BY MR. VERHOEVEN: 11:35:41
16 Q. As of May 22, did the board have any 11:35:48
17 information, any factual information, not legal 11:35:52
18 advice, but factual information about the allegation 11:35:57
19 that Mr. Levandowski had downloaded 14,000 files? 11:36:01
20 MR. FLUMENBAUM: Instruction not to answer. 11:36:03
21 BY MR. VERHOEVEN: 11:36:03
22 Q. As of this date, did the board know one way 11:36:15
23 or the other whether Stroz had documents that 11:36:24
24 Mr. Levandowski had taken from Google? 11:36:27
25 MR. FLUMENBAUM: Instruction not to answer. 11:36:29

1	BY MR. VERHOEVEN:	11:36:29
2	Q. Did you know one way or the other?	11:36:31
3	MR. FLUMENBAUM: Instruction not to answer.	11:36:53
4	BY MR. VERHOEVEN:	11:36:53
5	Q. If you had known that it was true that	11:36:55
6	Mr. Levandowski downloaded 14,000 Google files and	11:37:01
7	then went to Otto and was purchased by Uber, would you	11:37:06
8	have done anything about that?	11:37:08
9	MR. BRILLE: Object to form.	11:37:09
10	MR. FLUMENBAUM: You may answer that question as	11:37:11
11	worded.	11:37:12
12	THE WITNESS: When would I have known that?	11:37:16
13	BY MR. VERHOEVEN:	
14	Q. I'm saying, if you would've known that --	
15	A. At what point in time would I have known	11:37:18
16	that?	11:37:19
17	Q. Any point in time.	11:37:21
18	A. Well, if I had known that, I would have	11:37:24
19	objected to the transaction, if I had known that at	11:37:29
20	the date of that transaction.	11:37:31
21	Q. Okay. So if you had known that -- if you had	11:37:33
22	known the results of the due diligence report, would	11:37:37
23	you have objected to the transaction?	11:37:39
24	MR. BRILLE: Object to form.	11:37:47
25	MR. FLUMENBAUM: We're making assumptions as to	11:37:55

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1 what's in the due diligence report, so -- is there a 11:37:58
2 way you can rephrase that question? 11:38:02
3 MR. VERHOEVEN: I don't think so. I'm asking the 11:38:06
4 witness -- I'll ask it again. 11:38:08
5 BY MR. VERHOEVEN: 11:38:08
6 Q. Without revealing the substance of the 11:38:11
7 diligence report, if you had known about it at the 11:38:16
8 time of the transaction, would you have objected to 11:38:19
9 moving forward with the transaction? 11:38:22
10 MR. BRILLE: Object to form. 11:38:23
11 MR. FLUMENBAUM: Would you agree that follows our 11:38:25
12 non-waiver -- 11:38:26
13 MR. VERHOEVEN: Yes. 11:38:28
14 THE WITNESS: Yes. 11:38:32
15 MR. VERHOEVEN: And if I ask why, I assume I'll 11:38:40
16 get an instruction? 11:38:41
17 MR. FLUMENBAUM: You will until that report is 11:38:42
18 released. 11:38:44
19 MR. VERHOEVEN: Okay. 11:38:44
20 BY MR. VERHOEVEN:
21 Q. Was that -- withdrawn. 11:38:48
22 Would you have considered that to be material 11:38:52
23 information with respect to whether to approve the 11:38:57
24 transaction or not? 11:38:59
25 MR. FLUMENBAUM: Same -- not going to argue 11:39:03

1	waiver?	11:39:03
2	MR. VERHOEVEN: Correct.	11:39:04
3	MR. BRILLE: Object to form.	11:39:05
4	MR. FLUMENBAUM: You can answer yes or no.	11:39:07
5	THE WITNESS: Yes.	11:39:08
6	BY MR. VERHOEVEN:	11:39:08
7	Q. What was your reaction when you saw -- when	11:39:32
8	you read the Stroz report with respect to the fact	11:39:37
9	that it was not disclosed to the board at the time of	11:39:39
10	the acquisition? Were you upset?	11:39:43
11	MR. BRILLE: I'll object to form.	11:39:46
12	MR. FLUMENBAUM: I'll object to the form also.	11:39:49
13	Again I'll let him answer that without claim of	11:39:55
14	waiver.	11:39:56
15	MR. VERHOEVEN: Yes.	11:39:56
16	THE WITNESS: Yes.	11:39:58
17	BY MR. VERHOEVEN:	11:39:58
18	Q. Why?	11:40:00
19	MR. BRILLE: Same objections.	11:40:01
20	MR. VERHOEVEN: I'm asking for his reaction.	11:40:03
21	MR. FLUMENBAUM: So you got -- you got his answer.	11:40:06
22	He can't answer more than that without going into	11:40:09
23	substance.	11:40:10
24	BY MR. VERHOEVEN:	11:40:10
25	Q. Did you call up Mr. Levandowski after reading	11:40:13

1 it and accost him about it? 11:40:15

2 I'm sorry. Let me withdraw that. 11:40:16

3 Did you call him -- 11:40:18

4 MR. FLUMENBAUM: Maybe we should take a break. 11:40:20

5 MR. VERHOEVEN: Just one more. 11:40:22

6 BY MR. VERHOEVEN: 11:40:22

7 Q. Did you call up Mr. Kalanick or e-mail him or 11:40:25

8 something, in any way communicate with him, to accost 11:40:29

9 him about the fact that this was not disclosed prior 11:40:32

10 to the board making the decision to acquire? 11:40:37

11 MR. BRILLE: Object to form. 11:40:38

12 THE WITNESS: I don't know if there was -- I don't 11:40:40

13 know if I called him directly or specifically. 11:40:43

14 BY MR. VERHOEVEN: 11:40:43

15 Q. Did you have a conversation? 11:40:45

16 A. With anybody? 11:40:47

17 Q. With Mr. Kalanick. 11:40:50

18 A. Yeah, I don't know -- I don't know if I had a 11:40:53

19 direct . . . I just don't remember. 11:40:56

20 Q. You don't remember expressing any anger to 11:41:00

21 him about it? 11:41:04

22 A. It's possible. There's a lot going on at the 11:41:16

23 time. 11:41:16

24 Q. You were angry about it, weren't you? 11:41:19

25 A. I was. 11:41:20

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1 Q. And it's possible you communicated that to 11:41:22
2 Mr. Levandowski -- or to Mr. Kalanick? 11:41:25
3 A. It's possible, but I don't have -- 11:41:26
4 MR. FLUMENBAUM: Not Levandowski. 11:41:27
5 THE WITNESS: Right. 11:41:28
6 I don't have specific recollection of having 11:41:31
7 done that, but it's possible. 11:41:33
8 BY MR. VERHOEVEN: 11:41:33
9 Q. It's more than likely; right? 11:41:35
10 A. I don't know. 11:41:37
11 MR. FLUMENBAUM: Objection. Objection. 11:41:38
12 MR. VERHOEVEN: Do you want to take a break? 11:41:42
13 MR. FLUMENBAUM: Sure. Let's take a short break. 11:41:44
14 THE VIDEOGRAPHER: This marks the end of DVD No. 2 11:41:47
15 in the deposition of William Gurley. We're off the 11:41:49
16 record at 11:41 a.m. 11:41:51
17 (Recess taken.) 11:41:51
18 (Plaintiff's Exhibit 915 was marked.) 11:52:45
19 THE VIDEOGRAPHER: Back on the record. 11:52:53
20 This the beginning of DVD No. 3, and the time 11:52:56
21 is 11:52 a.m. 11:52:58
22 BY MR. VERHOEVEN: 11:52:58
23 Q. By May of 2017, were you aware that some 11:53:07
24 investors of Uber wanted Mr. Kalanick to resign as 11:53:13
25 CEO? 11:53:14

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5	Q. Okay.
---	----------

9	And naturally that's going to cause -- you	11:55:23
10	know when something has that much open discussion,	11:55:27
11	it's going to lead to other people discussing what the	11:55:31
12	right action is one way or another in terms of	11:55:34
13	ensuring the long-term health and success of the	11:55:39
14	organization.	11:55:40

The diagram illustrates a sequence of 12 steps in a process flow. Each step is represented by a small box on the left and a larger box on the right, connected by a horizontal line. The boxes are arranged in a grid-like fashion, with some steps having multiple sub-steps indicated by smaller boxes below the main ones.

Step	Step Label	Step Description
1	Start	Initial state or starting point
2	Step 2	First major step in the process
3	Step 3	Second major step in the process
4	Step 4	Third major step in the process
5	Step 5	Fourth major step in the process
6	Step 6	Fifth major step in the process
7	Step 7	Sixth major step in the process
8	Step 8	Seventh major step in the process
9	Step 9	Eighth major step in the process
10	Step 10	Ninth major step in the process
11	Step 11	Tenth major step in the process
12	End	Final state or ending point

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 MR. FLUMENBAUM: If it's a nonprivileged 11:57:16

15 conversation. We'll -- we'll invoke whatever the 11:57:20

16 confidentiality is in terms of the release of the 11:57:25

17 transcript. 11:57:25

18 But if it's nonprivileged, I believe you have 11:57:28

19 to respond to that. 11:57:31

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 BY MR. VERHOEVEN: 12:01:08

11 Q. You felt that the way that the acquisition 12:01:18

12 was handled was an example of company mismanagement, 12:01:23

13 right? 12:01:24

14 MR. BRILLE: Object to form. 12:01:31

15 MR. FLUMENBAUM: You've -- this is in -- you've 12:01:31

16 already -- we already covered this area before. I 12:01:36

17 mean . . .

18 MR. VERHOEVEN: Are you instructing him? 12:01:37

19 MR. FLUMENBAUM: I -- I'm not -- I'm not -- are 12:01:39

20 you trying to get privileged communications? I'm 12:01:42

21 not . . .

22 MR. VERHOEVEN: No. Can he answer? 12:01:45

23 MR. FLUMENBAUM: You can answer it if you . . . 12:01:47

24 THE WITNESS: Yes. I -- I believe it had 12:01:49

25 the -- had there been more disclosures around the 12:01:55

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1 acquisition, that we may not have done the 12:01:58
2 acquisition. And I believe that had we terminated 12:02:01
3 Anthony, upon him pleading the Fifth, that that would 12:02:05
4 have been a much better interest for the company as a 12:02:08
5 whole. 12:02:09
6 BY MR. VERHOEVEN: 12:02:09
7 Q. Did other investors share that view? 12:02:13
8 A. I don't recall having that specific 12:02:17
9 conversation about that specific topic with people 12:02:20
10 outside of the group. 12:02:22
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
16 MR. VERHOEVEN: Let's get the June 20 letter. 12:02:41
17 (Plaintiff's Exhibit 916 was marked.) 12:03:08
18 THE REPORTER: This is marked Exhibit 916. There 12:03:08
19 was a prior exhibit marked before we went back on the
20 record.
21 MR. VERHOEVEN: Yeah. Let's do 915 before we go 12:03:11
22 to this. I forgot about that one. 12:03:12
23 BY MR. VERHOEVEN:
24 Q. So put that aside, Mr. Gurley. 12:03:15
25 A. Oh, put that aside? 12:03:18

1 MR. FLUMENBAUM: This is 916? 12:03:20

2 BY MR. VERHOEVEN: 12:03:20

3 Q. Yes. But just one housekeeping matter here.

4 Take a look at 915. 12:03:34

5 I didn't hand it out, did I? 12:03:37

6 A. No, sir.

7 Q. Can you identify Exhibit 915? 12:03:50

8 A. 915, board minutes from May 25th of Uber 12:03:55

9 Technologies. 12:03:55

10 Q. And you attended this meeting? 12:03:57

11 A. Yes. 12:04:00

12 Q. What happened at this meeting? 12:04:04

13 A. My -- 12:04:14

14 Q. The last meeting, just for your information, 12:04:16

15 was May 22? 12:04:18

16 A. Yeah. My -- my -- my best recollection is 12:04:20

17 this is the meeting that Travis recommended 12:04:21

18 terminating Anthony Levandowski. 12:04:24

19 Q. Under Item 1, the only thing that's not 12:04:33

20 redacted by counsel for Waymo says: 12:04:37

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Do you see that? 12:04:44

25 A. Did you mean counsel of Uber? 12:04:46

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1 Q. Yeah. What did I say? Counsel for Uber. 12:04:50

2 A. Okay. What's the question? 12:04:52

█ █ [REDACTED] █

█ [REDACTED] █

█ [REDACTED] █

█ [REDACTED] █

█ [REDACTED] █

█ █ [REDACTED] █

█ █ [REDACTED] █

█ [REDACTED] █

11 MR. FLUMENBAUM: Again, to the extent that your 12:05:09

12 testimony would involve privileged communications -- 12:05:12

13 THE WITNESS: Right.

14 MR. FLUMENBAUM: -- you're not at liberty to 12:05:14

15 discuss that. 12:05:15

16 THE WITNESS: I would say this specifically 12:05:19

17 related to legal discussions that was privileged. 12:05:24

18 MR. VERHOEVEN: Uber's counsel didn't redact this 12:05:26

19 sentence. 12:05:27

20 MR. BRILLE: That's because the sentence itself is 12:05:32

21 not privileged. But perhaps conversations that relate 12:05:33

22 to these topics may be privileged. 12:05:36

23 BY MR. VERHOEVEN: 12:05:36

█ █ [REDACTED] █

█ [REDACTED] █

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 MR. BRILLE: And I would just say, Mr. Gurley, to 12:06:04

6 the extent that they don't include legal advice. 12:06:12

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 BY MR. VERHOEVEN: 12:06:31

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 Q. Okay. All right. 12:07:27

17 Now, let's go to 915. 12:07:29

18 MR. FLUMENBAUM: 916? 12:07:31

19 MR. VERHOEVEN: 916. 12:07:33

20 THE WITNESS: Yeah. 12:07:34

21 BY MR. VERHOEVEN: 12:07:34

22 Q. Can you identify this document? 12:07:37

[REDACTED]

[REDACTED]

[REDACTED]

Category	Item	Value
Category 1	Item 1.1	100
	Item 1.2	200
	Item 1.3	300
	Item 1.4	400
	Item 1.5	500
	Item 1.6	600
	Item 1.7	700
	Item 1.8	800
	Item 1.9	900
	Item 1.10	1000
Category 2	Item 2.1	150
	Item 2.2	250
	Item 2.3	350
	Item 2.4	450
	Item 2.5	550
	Item 2.6	650
	Item 2.7	750
	Item 2.8	850
	Item 2.9	950
	Item 2.10	1050
Category 3	Item 3.1	200
	Item 3.2	300
	Item 3.3	400
	Item 3.4	500
	Item 3.5	600
	Item 3.6	700
	Item 3.7	800
	Item 3.8	900
	Item 3.9	1000
	Item 3.10	1100
Category 4	Item 4.1	250
	Item 4.2	350
	Item 4.3	450
	Item 4.4	550
	Item 4.5	650
	Item 4.6	750
	Item 4.7	850
	Item 4.8	950
	Item 4.9	1050
	Item 4.10	1150
Category 5	Item 5.1	300
	Item 5.2	400
	Item 5.3	500
	Item 5.4	600
	Item 5.5	700
	Item 5.6	800
	Item 5.7	900
	Item 5.8	1000
	Item 5.9	1100
	Item 5.10	1200

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20	BY MR. VERHOEVEN:	12:11:24
21	Q. In addition --	12:11:25
22	MR. BRILLE: Wait, wait.	
23	MR. FLUMENBAUM: Hold it. Let him finish, please.	12:11:27
24	You interrupted him.	12:11:29
25	Go ahead, Bill.	12:11:30

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21	BY MR. VERHOEVEN:	12:16:24
22	Q. You believe that Mr. Kalanick committed fraud	12:16:26
23	on the board of directors by failing to disclose the	12:16:30
24	facts underlying the Otto acquisition, right?	12:16:34
25	A. Yes.	12:16:35

1 MR. BRILLE: Object to form. 12:16:36

2 THE WITNESS: Yes. 12:16:37

3 BY MR. VERHOEVEN: 12:16:37

4 Q. And you would agree that that would not be 12:16:39

5 ethical or moral, to commit such a fraud? 12:16:42

6 MR. BRILLE: Same objection. 12:16:44

7 THE WITNESS: I think that's a fair statement. 12:16:45

8 [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]

12 THE REPORTER: You have microphones on, gentlemen. 12:17:28

13 I just wanted to let you know.

14 MR. VERHOEVEN: I was just asking if there was

15 anything else in the letter.

16 BY MR. VERHOEVEN: 12:17:28

17 Q. You agree with the statements in this letter; 12:17:32

18 right? 12:17:32

19 A. I do. 12:17:33

20 [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 (Discussion off the record.) 12:20:22

11 BY MR. VERHOEVEN: 12:20:22

12 Q. All right. I'm going to mark as Exhibit 917 12:20:25

13 a Benchmark document from your firm that we just 12:20:30

14 received this morning. 12:20:31

15 A. Okay. 12:20:32

16 Q. For the record, it's Benchmark-Waymo-39 12:20:35

17 through 105. 12:20:43

18 (Plaintiff's Exhibit 917 was marked.) 12:21:01

19 BY MR. VERHOEVEN: 12:21:01

20 Q. It's a compilation of documents, it appears, 12:21:04

21 and it's got a -- on the front page, if you look at 12:21:10

22 the top right -- 12:21:11

23 MR. FLUMENBAUM: May I have a copy, please? 12:21:14

24 MR. VERHOEVEN: Do we have copies? 12:21:16

25 MR. FLUMENBAUM: Thank you. 12:21:18

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1 MR. VERHOEVEN: I think that's all we have. 12:21:20

2 Hey, we got them by e-mail this morning. If 12:21:28

3 you have a com- -- if you have a complaint you should 12:21:28

4 talk to the person who produced it. 12:21:32

5 MR. FLUMENBAUM: Well, just so the record is 12:21:35

6 clear, we produced it by e-mail at the request of 12:21:39

7 Waymo and -- 12:21:42

8 MR. VERHOEVEN: While we're here in 12:21:44

9 Morrison & Foerster. 12:21:45

10 MR. FLUMENBAUM: The subpoena was returnable today 12:21:48

11 at -- it was returnable today at your -- at your 12:21:51

12 offices. 12:21:52

13 We produced it by e-mail at your request in a 12:21:56

14 timely fashion, and these documents are part of, I 12:22:02

15 believe, Exhibit A. It's all part of the public 12:22:04

16 filing in Delaware, so it's not something that you 12:22:09

17 didn't have before. 12:22:12

18 MR. VERHOEVEN: Okay. So you'll represent this is 12:22:13

19 part of a public filing in Delaware? 12:22:16

20 MR. FLUMENBAUM: I believe it was. I have to take 12:22:18

21 a look at it, but I believe it was. I didn't check on 12:22:22

22 this particular one, but it's my understanding. 12:22:26

23 BY MR. VERHOEVEN: 12:22:26

24 Q. Mr. Gurley, do you have an understanding of 12:22:30

25 what your counsel referenced to with respect to this 12:22:33

1 public filing in Delaware? 12:22:37

2 What's he talking about? 12:22:38

3 A. I presume he's talking about the lawsuit that 12:22:43

4 was filed between Benchmark and Mr. Kalanick. 12:22:47

5 Q. Okay. So with the understanding that these 12:22:49

6 are exhibits in connection with that suit? 12:22:53

7 A. I --

8 Q. That's what counsel is representing; right? 12:22:56

9 A. Okay. 12:22:58

10 MR. VERHOEVEN: Are you representing that, 12:23:00

11 Counsel? 12:23:01

12 MR. FLUMENBAUM: I believe that that's what this 12:23:03

13 reflects. 12:23:04

14 BY MR. VERHOEVEN: 12:23:04

15 Q. Okay. Let's turn to Exhibit A. 12:23:06

16 A. Okay.

17 Q. And my first question is: Can you identify 12:23:13

18 this document? 12:23:14

19 A. I believe this is the letter that was signed 12:23:19

20 with -- by Travis at the end of the day of that 12:23:22

21 meeting. 12:23:23

22 Q. Okay. So you had some negotiation back and 12:23:29

23 forth and then this got signed? 12:23:31

24 A. Correct. 12:23:31

25 Q. So does that refresh your recollection that 12:23:34

1 he resigned on the same day as the meeting? 12:23:40

2 A. Yeah, yeah. I -- I wasn't trying to say he 12:23:42

3 didn't. You -- you had said in the first meeting, and 12:23:45

4 they met and broke, just like we've been doing, met 12:23:49

5 and broke. So I was just -- it was just a question of 12:23:51

6 the definition of "first." 12:23:52

7 So it did happen all in one day. 12:23:55

8 Q. Okay.

9 A. It was over a series of long -- many hours, I 12:23:59

10 think. 12:23:59

11 Q. Okay. And here he says, second-to-the-last 12:24:00

12 paragraph: 12:24:02

13 "I will make a public announcement of the 12:24:04

14 foregoing no later than 5:00 p.m. PDT Thursday, June 12:24:08

15 22, 2017."

16 Does that refresh your recollection as to 12:24:13

17 when it was announced? 12:24:15

18 A. Well, this was his commitment to announce. I 12:24:18

19 don't know exactly when it was announced, which was 12:24:21

20 your question.

21 Q. You don't have any reason to believe it 12:24:24

22 wasn't announced, do you? 12:24:25

23 A. It was clearly announced. 12:24:28

24 MR. VERHOEVEN: What number was that? 12:24:40

25 THE REPORTER: That one was 17, 917. 12:24:43

1 MR. VERHOEVEN: All right. Coming up to the end 12:25:04
2 here right on schedule. 12:25:12
3 Let's mark as 917 -- 12:25:15
4 MR. FLUMENBAUM: 918. 12:25:16
5 MR. VERHOEVEN: -- 918 a draft of a verified 12:25:23
6 complaint, Benchmark Capital Partners versus Travis 12:25:31
7 Kalanick and Uber Technologies. 12:25:34
8 (Plaintiff's Exhibit 918 was marked.) 12:25:43
9 MR. FLUMENBAUM: I believe you said draft, as 12:25:45
10 opposed to a verified complaint. 12:25:49
11 MR. VERHOEVEN: Let's see. Was it signed? It has 12:25:56
12 E-signatures on it. So you'll represent this was 12:26:00
13 filed? 12:26:00
14 MR. FLUMENBAUM: I believe it was. That's my 12:26:03
15 understanding of what was produced. 12:26:04
16 MR. VERHOEVEN: Okay. So with that clarification, 12:26:06
17 can you identify Exhibit 918? 12:26:09
18 MR. FLUMENBAUM: Can I have a copy, please? 12:26:11
19 Thank you. 12:26:13
20 THE WITNESS: I believe this is the lawsuit we 12:26:24
21 just discussed. 12:26:26
22 BY MR. VERHOEVEN: 12:26:26
23 Q. Did you approve the filing of this lawsuit? 12:26:28
24 A. I did. 12:26:29
25 Q. Did you review the complaint before it was 12:26:30

1 filed? 12:26:31

2 A. Yes. 12:26:31

3 Q. Do you agree with what the statements are in 12:26:34

4 the complaint? 12:26:35

5 A. I do. 12:26:35

6 Q. I'd direct your attention to page 5 of -- I'm 12:26:55

7 sorry -- to paragraph 5 of the complaint. 12:27:01

8 Do you see it says: 12:27:21

9 "Kalanick intentionally concealed and failed 12:27:29

10 to disclose his gross mismanagement and other 12:27:32

11 misconduct at Uber." 12:27:34

12 Do you see that? 12:27:38

13 A. Yes. 12:27:40

14 Q. And then it continues: 12:27:41

15 "These matters included, among others, 12:27:45

16 Kalanick's personal involvement in causing Uber to 12:27:49

17 acquire a self-driving vehicle start-up that, 12:27:53

18 according to a confidential report, not disclosed to 12:27:56

19 Benchmark at the time (the 'Stroz report'), allegedly 12:28:04

20 harbored trade secrets stolen from a competitor." 12:28:08

21 Do you see that? 12:28:09

22 A. Yes. 12:28:09

23 Q. And that's a reference to the Waymo 12:28:12

24 litigation and the facts that -- let me rephrase. 12:28:22

25 That's referring to the Otto acquisition? 12:28:27

1 A. Correct. 12:28:27

2 MR. FLUMENBAUM: Objection as to form. 12:28:30

3 MR. BRILLE: Objection as to form. 12:28:31

4 THE WITNESS: Sorry. 12:28:31

5 MR. FLUMENBAUM: You can answer. 12:28:32

6 BY MR. VERHOEVEN: 12:28:32

7 Q. And Mr. Kalanick's personal conduct, with 12:28:38

8 respect to the Otto acquisition, constituted gross 12:28:44

9 mismanagement and misconduct. 12:28:45

10 That's what you're saying here; right? 12:28:47

11 A. Yes. 12:28:47

12 Q. And the specific actions that this is 12:28:56

13 referencing to that Mr. Kalanick undertook, are those 12:29:01

14 the actions you've already testified to or is there 12:29:03

15 anything in addition to that? 12:29:05

16 A. I think we've already discussed it. 12:29:09

17 Q. Okay. I direct your attention to paragraph 12:29:31

18 6. 12:29:45

19 And the second -- take a second and review 12:29:56

20 that. 12:29:57

21 A. (Witness reviews document.)

22 Q. Do you see at the start it says: 12:30:12

23 "Kalanick knew Benchmark never would have 12:30:14

24 approved," and then it goes on, "if Benchmark had 12:30:20

25 known the truth about Kalanick's prior conduct." 12:30:24

1 Do you see that? 12:30:24

2 A. Yes. 12:30:25

3 Q. And this refers, in part, to your prior 12:30:30

4 testimony that if Benchmark had known about the 12:30:35

5 information contained in the Stroz report, it would 12:30:37

6 never have agreed to this amendment, right? 12:30:45

7 MR. BRILLE: Object to the form. 12:30:46

8 MR. FLUMENBAUM: Object to the form. 12:30:47

9 You can answer.

10 BY MR. VERHOEVEN:

11 Q. Well, you're correct. Let me rephrase. 12:30:51

12 This refers to your prior testimony that 12:30:54

13 Benchmark never would have approved the transaction 12:30:56

14 had it been aware of the Stroz report, correct? 12:31:02

15 MR. BRILLE: Same objection. 12:31:03

16 MR. FLUMENBAUM: Objection as to form, but you 12:31:05

17 may -- 12:31:06

18 THE WITNESS: The only clarification I would make 12:31:08

19 is that there are many other matters, also. 12:31:10

20 BY MR. VERHOEVEN:

21 Q. Yeah.

22 A. But this is one of those. Yes, correct. 12:31:14

23 Q. But it's your contention that Benchmark would 12:31:18

24 not have approved the amended certificate of 12:31:18

25 incorporation referenced here, or the voting 12:31:22

1 agreement, if it had known the real facts behind the 12:31:25
2 Otto acquisition, isn't it? 12:31:28
3 MR. BRILLE: Object to form. 12:31:29
4 MR. FLUMENBAUM: You may answer. 12:31:30
5 THE WITNESS: Along with other things. But, yes. 12:31:32
6 That was one of -- of many other things. 12:31:36
7 BY MR. VERHOEVEN: 12:31:36
8 Q. The next sentence says: 12:31:46
9 "Kalanick also understood that these matters, 12:31:49
10 once revealed, would likely force him to resign as 12:31:53
11 Uber's CEO." 12:31:54
12 Do you see that? 12:31:55
13 A. I do. 12:31:56
14 Q. And one of those matters is the facts 12:32:00
15 underlying the Otto acquisition, correct? 12:32:02
16 MR. BRILLE: Object to form. 12:32:04
17 MR. FLUMENBAUM: You may answer. 12:32:05
18 THE WITNESS: Yes, one of those facts. 12:32:08
19 BY MR. VERHOEVEN: 12:32:08
20 Q. And throughout this sentence, if it refers to 12:32:21
21 these matters, your answer would be the same, that 12:32:24
22 included in the matters would be the Otto transaction? 12:32:28
23 MR. FLUMENBAUM: Objection as to form. But . . . 12:32:32
24 BY MR. VERHOEVEN:
25 Q. I mean, you can see the next -- okay. I was

1	trying to shorten it.	12:32:35
2	The next sentence says:	12:32:36
3	"Kalanick, therefore, knowingly concealed	12:32:38
4	these matters from Benchmark and Uber's board to	12:32:43
5	obtain, for his personal benefit . . ."	12:32:47
6	And then it goes on. Do you see that?	12:32:49
7	A. Yes.	12:32:51
8	Q. "These matters" reference, in part, the Otto	12:32:55
9	acquisition?	12:32:56
10	A. In part.	12:32:57
11	Q. And the testimony you gave about it earlier	12:32:59
12	today?	12:33:00
13	A. That is correct.	12:33:00
14	Q. Okay. Why would the -- in your view, why	12:33:12
15	would the facts underlying the Otto acquisition, if	12:33:16
16	known by Benchmark and the board, likely have forced	12:33:21
17	Travis Kalanick to resign?	12:33:24
18	MR. BRILLE: Object to form.	12:33:27
19	MR. FLUMENBAUM: Objection to form. But again,	12:33:28
20	you can't disclose any of the specifics that are in	12:33:32
21	the Stroz report.	12:33:34
22	THE WITNESS: Understood.	12:33:39
23	So one, just reiterating, like, there were	12:33:46
24	multiple incidents that led us to this conclusion and	12:33:50
25	assess this belief in this lawsuit.	12:33:54

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1 With respect to the Otto acquisition, there's 12:33:57
2 actually more detail later in the complaint. But it's 12:34:00
3 become public knowledge, not involving the Stroz 12:34:05
4 report, that at the time the board was asked to 12:34:09
5 approve this, that -- that Travis and other members of 12:34:13
6 the management team had knowledge that there were five 12:34:16
7 disks that were in Anthony's possession, and that he 12:34:23
8 said there was Google information on those disks. So 12:34:25
9 that's now in the public record. 12:34:29

10 When you look at the -- we've already been 12:34:32
11 through it. But you look at the deal, and the fact 12:34:35
12 that so much of it weighed on him and the fact that 12:34:39
13 there were large indemnity provisions put aside 12:34:45
14 specifically for him, I don't know of a way you could 12:34:50
15 possibly present that to a board [REDACTED] [REDACTED]

[REDACTED] and -- and that be okay. Like, I -- I 12:35:02
17 can't fathom that. 12:35:05

18 BY MR. VERHOEVEN:

19 Q. When you referred to "him," you're referring 12:35:08
20 to Mr. Levandowski, right, in that answer? 12:35:10

21 MR. BRILLE: Object to form. 12:35:13

22 THE WITNESS: It's in the public record that -- 12:35:15
23 that the Uber executives were aware -- I'll -- I'll 12:35:17
24 try not to use pronouns -- were aware that Anthony 12:35:21
25 Levandowski had the five disks. 12:35:24

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1 When -- when I was talking about -- you know, 12:35:26
2 this is the largest recipient of the proceeds from the 12:35:32
3 acquisition and the leader of the group and the one 12:35:38
4 that stands to benefit the most from the 12:35:40
5 indemnification. So [REDACTED], when 12:35:45
6 you have this fact, is a -- is misrepresentation, you 12:35:53
7 know, from my point of view. 12:35:57
8 BY MR. VERHOEVEN: 12:35:57
9 Q. Okay. Thank you. 12:35:58
10 And why do you think Mr. Kalanick knowingly 12:36:16
11 concealed those issues? 12:36:18
12 MR. FLUMENBAUM: Objection to form. 12:36:22
13 MR. BRILLE: Objection to form. 12:36:24
14 BY MR. VERHOEVEN: 12:36:24
15 Q. Well, let me read the complaint. Paragraph 12:36:25
16 6:
17 "Kalanick, therefore, knowingly concealed 12:36:30
18 these matters from Benchmark and Uber's board." 12:36:34
19 And then it goes on. Do you see that? 12:36:34
20 A. I do. 12:36:35
21 Q. Why do you think he did? 12:36:36
22 A. I'd be speculating as to his intent. I don't 12:36:40
23 know. 12:36:40
24 Q. Well, it says here: 12:36:40
25 "For his personal benefit, the unilateral 12:36:47

1 right to pack the board with three additional 12:36:50
2 directors of his choosing."

3 You stand by that statement; right? 12:36:52

4 A. I do. 12:36:53

5 Q. Any other reasons? 12:36:55

6 A. I -- I -- I'd be guessing that -- what his 12:37:02
7 intentions were. 12:37:03

8 Q. Did you ever talk to Mr. Kalanick about why 12:37:05
9 he concealed the facts underlying the Otto 12:37:08
10 transaction? 12:37:09

11 A. I have not. 12:37:10

12 Q. What about with other executive management at 12:37:14
13 Uber? 12:37:30

14 A. Well, not outside of conversations that were 12:37:34
15 privileged with the -- with the legal team. 12:37:36

16 Q. I direct your attention to paragraph 33. 12:38:05
17 It's on page 15 of Exhibit 918. 12:38:08

18 MR. FLUMENBAUM: I'm sorry. Hold on. 12:38:10

19 Thank you. 12:38:11

20 BY MR. VERHOEVEN: 12:38:11

21 Q. Are you ready for questions? 12:38:27

22 A. Yes. 12:38:27

23 Q. Is this the place where you testified earlier 12:38:30
24 the deal -- the details of the Otto transaction were 12:38:35
25 set forth in more detail, this section entitled -- 12:38:44

1 A. Yes, this section. That's fair. Correct. 12:38:46

2 Q. You've referenced there's a -- I'm sorry. 12:39:07

3 The complaint references: 12:39:12

4 "Kalanick praised Levandowski as one of the 12:39:15

5 world's leading autonomous engineers and an 12:39:20

6 entrepreneur with a real sense of urgency. 12:39:24

7 "Kalanick further described Levandowski as 12:39:26

8 his brother from another mother." 12:39:30

9 The allegation is -- and your belief is -- 12:39:34

10 that he was saying all that, but withholding the 12:39:37

11 information he had from the Stroz investigation; 12:39:41

12 right? 12:39:41

13 MR. BRILLE: Object to form. 12:39:44

14 MR. FLUMENBAUM: Object to form. You can try to 12:39:46

15 answer that. 12:39:49

16 THE WITNESS: These are -- these are taken from -- 12:39:50

17 from -- as you can see, from public statements that he 12:39:53

18 made. 12:39:54

19 His praise for Anthony in these public venues 12:39:59

20 is consistent with what he presented at the board 12:40:03

21 level, and so there's no inconsistency here. 12:40:06

22 I -- and as you -- as you assert, he did not 12:40:12

23 disclose these other details, you know. And I -- and 12:40:17

24 I had mentioned, and they're later in here in the 12:40:20

25 complaint, that some of that is now public with regard 12:40:23

1 to the five-disk matter. 12:40:26

2 BY MR. VERHOEVEN: 12:40:26

3 Q. The last sentence of this paragraph says: 12:40:29

4 "In discussing the Otto transaction in 2016, 12:40:32

5 Kalanick repeatedly emphasized to Gurley and other 12:40:36

6 board members that Uber's acquisition of Otto, 12:40:39

7 employment of Anthony Levandowski, would be 12:40:41

8 transformative for Uber's business." 12:40:44

9 Do you see that? 12:40:45

10 A. I do. 12:40:46

11 Q. What is that referring to? 12:40:48

12 A. Once again, consistent with what we discussed 12:40:53

13 earlier, there was a -- a big part of the argument for 12:40:57

14 why we needed to do this transaction was to employ 12:41:01

15 Anthony Levandowski, who -- who Mr. Kalanick believed 12:41:04

16 was one of the leading experts on autonomous vehicles 12:41:07

17 in -- in the -- in the world. 12:41:10

18 Q. Was employing Anthony Levandowski worth 12:41:14

19 \$680 million? 12:41:17

20 MR. BRILLE: Object to form. 12:41:17

21 MR. FLUMENBAUM: Object to form. We've sort of 12:41:19

22 been over this. 12:41:20

23 You can answer it again. 12:41:22

24 THE WITNESS: Yeah, I don't -- I don't mind going 12:41:24

25 over it again. 12:41:25

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 BY MR. VERHOEVEN: 12:41:42

8 Q. I direct your attention to paragraph 67. 12:42:14

9 A. Oh, wow. 12:42:15

10 Q. Page 30. All right. Take a second and read 12:42:31

11 it and tell me when you're ready to answer questions. 12:42:32

12 MR. FLUMENBAUM: Paragraph 67? 12:42:36

13 MR. VERHOEVEN: Paragraph 67. 12:42:38

14 (Witness reviews document.) 12:42:49

15 THE WITNESS: Okay. 12:42:50

16 BY MR. VERHOEVEN: 12:42:50

17 Q. And this -- this references: 12:42:51

18 "Kalanick's fraudulent statements and 12:42:54

19 omissions breached his fiduciary duties, including," 12:42:57

20 and then it gets more specific. 12:42:59

21 Do you see that? 12:43:00

22 A. Um-hum. 12:43:01

23 Q. Which of Mr. Kalanick's statements related to 12:43:08

24 the Otto transaction breached his fiduciary duties? 12:43:13

25 A. It would seem obvious that this statement 12:43:22

1 that was made to the board [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] left me -- 12:43:37
5 and I can't speak for the other board members -- with 12:43:40
6 an impression that is remarkably different from that 12:43:44
7 that I hold today. 12:43:46
8 Q. And I take it it's your belief that his 12:43:55
9 omission of that critical information during his 12:44:00
10 presentation also constituted fraud and a breach of 12:44:09
11 his fiduciary duties? 12:44:11
12 MR. BRILLE: Object to form. 12:44:12
13 THE WITNESS: That is correct. Once again, this 12:44:14
14 statement refers to other issues also. But with 12:44:20
15 regard to that specific issue, you are correct. 12:44:24
16 BY MR. VERHOEVEN: 12:44:24
17 Q. Does anything else come to mind, still on 12:44:47
18 paragraph 67 -- understanding it's a general 12:44:52
19 statement, but focusing specifically on the Otto 12:44:55
20 acquisition portion of it. 12:44:57
21 A. Um-hum. 12:44:59
22 Q. Does anything else come to mind, in addition 12:45:02
23 to what you've already testified to, that was either a 12:45:09
24 statement or omission by Mr. Kalanick that breached 12:45:13
25 his fiduciary duties or constituted fraud? 12:45:17

1 A. Related to that particular transaction? 12:45:25

2 Q. Right. Or related to Otto, related to 12:45:28

3 Mr. Levandowski. 12:45:29

4 A. Yeah. Yeah. 12:45:31

5 No, not that we haven't previously discussed. 12:45:34

6 MR. VERHOEVEN: Perhaps we should take a short 12:46:02

7 break, and I'll just review -- I may have another five 12:46:06

8 minutes of questions -- 12:46:07

9 MR. FLUMENBAUM: Okay. Great. 12:46:08

10 MR. VERHOEVEN: -- but I'm coming up to the end. 12:46:10

11 MR. FLUMENBAUM: Great. 12:46:12

12 THE VIDEOGRAPHER: Off the record at 12:46 p.m. 12:46:14

13 (Recess taken.) 12:46:15

14 THE VIDEOGRAPHER: Back on the record at 12:54 12:54:08

15 p.m. 12:54:08

16 BY MR. VERHOEVEN: 12:54:08

17 Q. I direct your attention to paragraph 37 of 12:54:17

18 Exhibit 918, the Benchmark complaint. 12:54:22

19 A. Um-hum. 12:54:23

20 Q. And read 37 to yourself and tell me when 12:54:27

21 you're ready to answer questions. 12:54:29

22 (Witness reviews document.) 12:54:48

23 A. Okay. 12:54:49

24 Q. So earlier -- well, I direct your attention 12:54:52

25 to the phrase "interim findings." 12:54:54

1 Do you see it's sprinkled through the 12:54:57
2 paragraph there? 12:54:58
3 A. Yes. 12:54:58
4 Q. When we testified earlier about this -- I 12:55:02
5 don't want to go over it again -- I think you just 12:55:05
6 said -- you and I just said "the Stroz report." 12:55:09
7 But were you referencing, specifically in 12:55:11
8 this time period, the interim findings of the Stroz 12:55:14
9 investigation? 12:55:16
10 MR. FLUMENBAUM: Objection as to form. 12:55:19
11 BY MR. VERHOEVEN: 12:55:19
12 Q. When you testified about if something had 12:55:22
13 been disclosed, if the Stroz report had been 12:55:25
14 disclosed, more accurately what you meant is if the 12:55:28
15 interim findings of the Stroz report -- of the Stroz 12:55:30
16 investigation had been disclosed; is that right? 12:55:33
17 A. This particular complaint was based on all 12:55:44
18 that information that was in the public record. 12:55:46
19 There are documents related to this lawsuit 12:55:50
20 that highlight that, as of this date, there were these 12:55:54
21 interim findings available. 12:55:55
22 Q. Right.
23 A. And we're merely highlighting that those were 12:55:59
24 never disclosed to the board. 12:56:01
25 Q. Okay. I direct your attention to paragraph 12:56:12

1 77 of the complaint, Exhibit 918. 12:56:16

2 There's a sentence in here that says: 12:56:33

3 "At the time, Benchmark could not have known 12:56:38

4 of the matters Kalanick intentionally concealed, many 12:56:42

5 of which were within Kalanick's exclusive knowledge or 12:56:46

6 only known to Kalanick and an 'inner circle' of Uber 12:56:53

7 executives loyal to him (many of whom have since been 12:56:57

8 terminated or forced to resign due to the misconduct 12:57:01

9 described above)." 12:57:06

10 Do you see that sentence? 12:57:08

11 A. Um-hum. 12:57:10

12 Q. Who was in Kalanick's inner circle, as 12:57:13

13 referenced in this paragraph, to the extent you have 12:57:19

14 knowledge? 12:57:19

15 A. Sure. The -- once again, I would reiterate 12:57:24

16 that this complaint and this paragraph reference many 12:57:29

17 issues, not just those related to -- to the Otto 12:57:33

18 acquisition. And so that phrase may or may not have 12:57:38

19 applicability to what we're discussing today. 12:57:41

20 You know, when you look at the parenthetical 12:57:44

21 phrase about -- 12:57:49

22 Q. I'm just asking about who the -- who the 12:57:51

23 inner circle is. 12:57:53

24 A. I -- I was getting to that. 12:57:55

25 Q. Okay.

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1 A. Nina Qi and Cameron. 12:59:24

2 Q. So with respect to the Waymo dispute or 12:59:29

3 the -- withdrawn. 12:59:30

4 With respect to the Otto acquisition, this 12:59:35

5 phrase you interpret to reference those two 12:59:37

6 individuals? 12:59:38

7 A. Yes. 12:59:38

8 Q. Has either of those two individuals been 12:59:47

9 terminated, to your knowledge? 12:59:49

10 A. No. 12:59:49

11 Q. All right.

12 MR. FLUMENBAUM: Can I have a -- all right. 13:00:05

13 Forget it. Go ahead. 13:00:07

14 MR. VERHOEVEN: So what did you want to talk to 13:00:10

15 him about? 13:00:10

16 MR. FLUMENBAUM: No, just go ahead. 13:00:13

17 MR. VERHOEVEN: Okay. 13:00:13

18 BY MR. VERHOEVEN:

19 Q. There came a time in which you resigned from 13:00:16

20 the board of Uber? 13:00:17

21 A. Correct. 13:00:17

22 Q. When was that, roughly? 13:00:19

23 A. I think it was a couple of days after Travis 13:00:27

24 signed the resignation letter we've already looked at. 13:00:32

25 Q. Why did you resign? 13:00:45

1 A. The members of -- of our partnership and I 13:00:49
2 had a lengthy discussion about trying to -- whether or 13:00:56
3 not it made sense to swap out the board member that 13:01:00
4 represented Benchmark with Uber, in an effort to try 13:01:04
5 and move things forward in a positive direction. 13:01:08

6 The -- the conversations and back and forth 13:01:13
7 and events that led to the meeting in Chicago, I think 13:01:16
8 it's safe to say, had a strain on the relationship 13:01:21
9 between myself and -- and Mr. Kalanick. And it was 13:01:29
10 merely a decision from our firm to try and put a new 13:01:35
11 foot forward to try and create kind of a new day and 13:01:39
12 new relationship with the board. 13:01:41

13 Q. Did you have any discussions with anyone at 13:01:45
14 Uber about your resignation before you resigned? 13:01:48

15 A. I did not. 13:01:49

16 Q. What about with other board members? 13:01:51

17 A. I did not. 13:01:53

18 Q. Have you had any conversations with anybody 13:02:01
19 at Uber since you've resigned from the board? 13:02:04

20 A. Yeah. There were -- there were numerous 13:02:04
21 conversations, as part of the handoff process I was 13:02:13
22 involved in, all of those committees. I wanted to 13:02:16
23 make sure that -- that my partner got the benefit of 13:02:19
24 the -- you know, the transfer of information, that 13:02:23
25 kind of thing. We had a lot of meetings to make sure 13:02:26

1 that that was so . . . 13:02:27

2 Q. Did your partner assume all the positions 13:02:29

3 that you had? 13:02:31

█ █ [REDACTED] █

█ [REDACTED] █

█ [REDACTED] █

█ █ [REDACTED] █

█ [REDACTED] █

█ █ [REDACTED] █

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█ [REDACTED] █

█ █ [REDACTED] █

█ [REDACTED] █

█ █ [REDACTED] █

22 Q. Okay. Did you have any conversations with 13:03:43

23 Arianna Huffington about the Uber acquisition of Otto? 13:04:01

24 A. I don't recall any conversations with Arianna 13:04:06

25 specifically about the acquisition, no. 13:04:08

1 Q. Did Ms. Huffington participate and contribute 13:04:13
2 to these board meetings we went through on this 13:04:16
3 subject? 13:04:17

4 A. I don't recall any specific commentary 13:04:21
5 related to the board meeting -- that she made related 13:04:24
6 to the board meeting around the Otto acquisition. 13:04:29

█ [REDACTED] █

█ [REDACTED] █

█ [REDACTED] █

█ [REDACTED] █

11 So I have recollection of those conversations 13:04:47
12 but not -- I don't remember her opining directly on 13:04:51
13 the Otto acquisition. 13:04:53

14 Q. Do you believe she did? 13:04:56

15 A. I -- I don't -- I don't recall. 13:04:58

16 Q. Do you recall sending Ms. Huffington a copy 13:05:05
17 of the Stroz report? 13:05:07

18 A. I don't recall doing that. 13:05:11

19 Q. Why would you have done that, if you did? 13:05:16

20 MR. BRILLE: Object to form. 13:05:17

21 BY MR. VERHOEVEN: 13:05:17

22 Q. Okay. I'll represent that you did. 13:05:19

█ [REDACTED] █

█ [REDACTED] █

█ [REDACTED] █

1 [REDACTED] 13:05:33

2 Q. Did you have a discussion with her about the 13:05:34

3 report? 13:05:35

4 MR. FLUMENBAUM: You can answer -- you can answer 13:05:38

5 that yes or no, if you recall. 13:05:40

6 THE WITNESS: I -- I -- I just don't recall. 13:05:46

7 BY MR. VERHOEVEN: 13:05:46

8 Q. Do you think you would have? 13:05:49

9 MR. FLUMENBAUM: Objection as to form. 13:05:51

10 THE WITNESS: It's possible. 13:05:52

11 BY MR. VERHOEVEN: 13:05:52

12 Q. I mean, you sent it to her? 13:05:55

13 A. Okay. If I did, then, it's likely that I 13:05:58

14 did. 13:05:58

15 Q. Have a conversation? 13:05:59

16 A. Yeah.

17 Q. You can't remember the substance of any 13:06:02

18 conversation? 13:06:04

19 MR. FLUMENBAUM: Asked and answered. 13:06:08

20 THE WITNESS: I -- I don't recall any specifics. 13:06:11

21 MR. VERHOEVEN: You're supposed to only object to 13:06:12

22 form. 13:06:13

23 BY MR. VERHOEVEN: 13:06:13

24 Q. What about Mr. Bonderman? Did you send a 13:06:19

25 copy of the report to him? 13:06:21

1 A. I don't recall. 13:06:22

2 Q. Do you remember any conversations you had 13:06:26

3 with Mr. Bonderman about the report or the Otto 13:06:31

4 acquisition? 13:06:32

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 A. I don't remember any specific conversations. 13:07:32

20 I would say that it's my opinion that he was also of 13:07:40

21 the belief that Anthony should have been terminated as 13:07:43

22 soon as he pled the Fifth. 13:07:45

23 Q. Is that based on conversations with him 13:07:47

24 generally? 13:07:49

25 A. Yes. 13:07:49

1 Q. And you -- can you recall the specifics of 13:07:51
2 any of those conversations? 13:07:52

3 A. I don't remember any of the specifics. 13:07:55

4 Q. Did he contribute during board meetings on 13:07:57
5 this subject? 13:07:59

6 A. Yes. 13:07:59

7 Q. Can you remember what he said in any of those 13:08:01
8 meetings? 13:08:02

9 A. I -- I don't. I just know that his -- I know 13:08:04
10 that that was his point of view. 13:08:06

11 MR. VERHOEVEN: Thank you very much, Mr. Gurley. 13:08:28
12 I have no further questions at this time. 13:08:31

13 We have, as you've noticed, several privilege 13:08:34
14 instructions which are currently in dispute. And if 13:08:39
15 there's a ruling that certain documents have to be 13:08:43
16 produced, we -- just so you know, we may take the 13:08:47
17 position that you have to come back and answer some 13:08:49
18 questions about that. 13:08:50

19 THE WITNESS: Okay. 13:08:50

20 MR. VERHOEVEN: Thank you very much for your time. 13:08:53

21 THE WITNESS: Thank you.

22 MR. FLUMENBAUM: Anybody else? 13:08:54

23 MR. BRILLE: Not here, no. 13:08:56

24 MR. FLUMENBAUM: Thank you. Thank you all. 13:08:58

25 THE VIDEOGRAPHER: This concludes today's 13:09:01

1 deposition of William Gurley, consisting of three 13:09:04

2 DVDs. 13:09:05

3 We're off the record at 1:09 p.m. 13:09:09

4 (Whereupon, the deposition was adjourned at

5 1:09 p.m.)

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15 _____
JOHN WILLIAM GURLEY

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1 FEDERAL CERTIFICATE OF DEPOSITION OFFICER
2 I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby
declare:

3 That, prior to being examined, the witness named
4 in the foregoing deposition was by me duly sworn
pursuant to Section 30(f)(1) of the Federal Rules of
Civil Procedure and the deposition is a true record of
5 the testimony given by the witness;

6 That said deposition was taken down by me in
shorthand at the time and place therein named and
7 thereafter reduced to text under my direction;

8 --X-- That the witness was requested to
review the transcript and make any changes to the
9 transcript as a result of that review pursuant to
Section 30(e) of the Federal Rules of Civil Procedure;

10 ----- No changes have been provided by the
witness during the period allowed;

11 ----- The changes made by the witness are
12 appended to the transcript;

13 ----- No request was made that the transcript
be reviewed pursuant to Section 30(e) of the Federal
14 Rules of Civil Procedure.

15 I further declare that I have no interest in the
event of the action.

16 I declare under penalty of perjury under the laws
17 of the United States of America that the foregoing is
true and correct.

18 WITNESS my hand this 25th day of August, 2017.
19
20
21

22 
23
24

25 ANRAE WIMBERLEY, CSR NO. 7778